United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

JOINT APPENDIX

F 705

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,273

STATE LOAN AND FINANCE CORPORATION (Successor by merger to LINCOLN SERVICE CORPORATION), *Petitioner*,

v.

DISTRICT OF COLUMBIA, *Respondent*.

On Petition for a Review of a Decision of the District of Columbia Tax Court

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

JOINT APPENDIX

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JOINT APPENDIX

Docket Entries

Memorandum—Franchise Tax 1958 $29,910.67
Int. 10,169.63

1959 $20,674.31
Int. 6,098.92

Date	Proceedings
1964	
May 22	Petition filed—Copies served Attorney for Petitioner, Corporation Counsel and Finance Officer.
June 11	Motion For Extension of Time Within Which To File Answer of Respondent—Granted to July 5—Certificate of Service.
July 6	Answer filed by Respondent—Certificate of Service.
July 22	Hearing set for Aug. 19—Certificate of Service.
Aug. 19	Hearing—Robert E. McCally for District.
Sept. 30	Brief for Petitioner—Certificate of Service.
Dec. 1	Stipulation.
Dec. 9	Supplemental Brief For Petitioner—Certificate of Service.
Dec. 10	Motion For Extension Of Time Within Which To File Brief For Respondent—Granted—Certificate of Service.
1965	
Jan. 11	Motion For Extension Of Time Within Which To File Brief For Respondent—Granted—Certificate of Service.
Jan. 19	Brief for Respondent—Certificate of Service.
Jan. 19	Findings of Fact and Opinion—Certificate of Service.

Feb. 3—Motion For Rehearing and Reconsideration filed by Petitioner—Certificate of Service.

Feb. 16—Memorandum—Order—Case set to be heard on March 8—Certificate of Service.

Feb. 25—Joint Motion to Change Date for Rehearing—Granted to April 12—Certificate of Service.

Mar. 24—Amendment to Answer of District of Columbia—Certificate of Service.

Apr. 2—Motion To Continue Date of Rehearing—Granted to May 25—Certificate of Service.

May 25—Hearing—Robert E. McCally, Esq. for District.

June 25—Brief for Petitioner—Certificate of Service.

July 27—Motion For Extension Of Time, Time For Filing Motion Having Expired filed by Respondent—Certificate of Service.

July 28—Granted—Certificate of Service.

Sept. 1—Supplemental Brief For Respondent on Rehearhearing—Certificate of Service.

1966

Feb. 2—Supplemental Stipulation.

Feb. 22—Hearing—Robert E. McCally for District.

Mar. 7—Findings of Fact and Opinion on Rehearings—Certificate of Service.

June 2—Computation For Entry of Decision.

June 3—Decision—Certificate of Service.

June 6—Petition For Review filed by Petitioner—Certificate of Service.

June 8—Designation of Record—Certificate of Service.

[Filed May 22, 1964]

THE DISTRICT OF COLUMBIA TAX COURT

Docket No. 1937

STATE LOAN AND FINANCE CORPORATION (Successor by merger to Lincoln Service Corporation) Washington, D. C., *Petitioner*

v.

DISTRICT OF COLUMBIA, *Respondent*

Petition

The above-named Petitioner appeals from an assessment of taxes against it, and avers as follows:

1. The Petitioner is a Delaware corporation. The taxpayer was Lincoln Service Corporation, also a Delaware corporation, with which the Petitioner merged on March 16, 1959, assuming all assets and liabilities of such corporation. Petitioner has an executive office in Washington, D. C., at 1200-18th St., N. W.

2. The tax in controversy involves Corporate Franchise Taxes, based on income, of Lincoln Service Corporation for its fiscal year ended June 30, 1958 and the period July 1, 1958 through March 16, 1959, following which its final return was filed. The aggregate deficiency assessed against Petitioner for the fiscal year ended June 30, 1958 was $29,910.67 and for the period ended March 16, 1959 was $20,674.31, together in each case with interest to the date of payment.

3. The notices of assessment were dated February 28, 1964 and were based upon a deficiency notice forwarded to Petitioner on December 2, 1963, a copy of which notice is attached hereto, marked Exhibit A. Such deficiency included a change of the apportionment factor by reference to a previously proposed assessment, dated February 5, 1962, the applicable portion of which is attached hereto,

marked Exhibit B, and by this reference made a part hereof. The tax deficiencies were paid by Petitioner, under protest in writing, on May 21, 1964. Photocopies of the notices of assessment are attached hereto, marked Exhibit C with respect to the assessment for the fiscal year ended June 30, 1958, and Exhibit D as to the assessment for the period ended March 16, 1959.

4. The assessment of tax is based upon the following errors:

(a) The Assessor erred in disallowing deductions in the amount of $385,315.74 for the fiscal year ended June 30, 1958 and $384,671.71 for the period ended March 16, 1959 in computing "revised net D. C. taxable income," as set out in the notice of deficiency, Exhibit A hereto.

(b) The Assessor erred in increasing the apportionment factor from .3224% for the fiscal year ended June 30, 1958, as set out in the return as filed, to .882348%, and increasing it from .3525%, as set out in the return filed for the period July 1, 1958 through March 16, 1959, to .848295%, as set out in Exhibit B attached hereto.

5. The facts upon which Petitioner relies as sustaining the assignments of error in this proceeding are as follows:

I.

A. The taxpayer, Lincoln Service Corporation, was a holding company. Its subsidiary corporations were principally engaged in the business of making small loans to individual borrowers. At the fiscal year-end, June 30, 1958, its subsidiaries operated 103 loan offices in eleven States, as follows:

Florida	8	Pennsylvania	26
Georgia	2	South Carolina	3
Kentucky	11	Texas	7
Louisiana	9	Virginia	12
Maryland	12	West Virginia	12
Ohio	1		

At March 16, 1959, such subsidiaries operated 105 loan offices in eleven States, as follows:

Florida	8	Pennsylvania	27
Georgia	2	South Carolina	3
Kentucky	11	Texas	7
Louisiana	9	Virginia	12
Maryland	13	West Virginia	12
Ohio	1		

Generally, each subsidiary was incorporated in the State in which it operated, or was a Delaware corporation qualified in the State in which it conducted its business. None of the loan subsidiaries of Lincoln Service Corporation, during the periods in question, conducted any business in the District of Columbia.

B. The taxpayer, Lincoln Service Corporation, derived its income solely from the following sources:

1. Interest on loans to subsidiary corporations;
2. Administrative fees paid by its subsidiary corporations for supervision and management services;
3. Dividends paid by certain of its subsidiary corporations.

C. The expenses of the taxpayer consisted of salaries, rent, telephone, stationary, postage, insurance, long-term debt expense, directors' fees, travel expense, repairs, depreciation, taxes, auto expense, and other general operating expenses.

D. In the District of Columbia Corporation Franchise Tax returns for the periods in question, the taxpayer

treated the interest received and the administrative fees as subject to apportionment in the District of Columbia, and the dividends as not subject to apportionment, being wholly without the District.

E. In the returns as filed, the taxpayer allocated expense deductions within and without the District of Columbia in arriving at net taxable income. The Assessor, however, erroneously changed the method of determining "net taxable income" in that he computed the ratio of dividend income to total gross income (interest plus administrative fees plus dividends). This ratio was .270210% for the fiscal year ended June 30, 1958 and .359906% for the period ended March 16, 1959. The Assessor then applied this percentage factor to the total expenses of taxpayer, whether within or without the District of Columbia, and disallowed as any deduction the resultant product, which amounted to $385,315.74 for the fiscal year ended June 30, 1958 and $384,671.71 for the period ended March 16, 1959, regardless of whether such expenses were within or without the District of Columbia and regardless of whether they had any relationship to the receipt by taxpayer of dividends.

F. At the end of the fiscal year ended June 30, 1948, the taxpayer had in excess of 103 subsidiaries and at March 16, 1959 in excess of 105 subsidiaries engaged in the loan and finance business in various areas of the United States, all of which were outside the District of Columbia. Certain of such subsidiaries paid dividends as they accumulated earnings and profits from their loan operations.

During the fiscal year ended June 30, 1958, dividends were received from twenty-four of the more than 103 subsidiaries of the taxpayer. For the period ended March 16, 1959, dividends were received from eighteen of the more than 105 subsidiaries. The dividends were declared and paid by these subsidiaries and no activity of the taxpayer produced any of such dividends, nor did the tax-

payer incur any expense with respect to the receipt of such dividends.

B. All expenses of the taxpayer were related to the services required with respect to raising money from outside sources throughout the United States, which could in turn be lent to the subsidiaries, and with respect to the necessary clerical and administrative staff to perform service functions for the subsidiaries, for which the taxpayer received administrative charges from its subsidiaries.

II.

A. In determining the apportionment factor, the taxpayer in its returns had allocated expenses within and without the District of Columbia, to which the Assessor takes no exception, except with respect to interest and long-term debt expense. The taxpayer treated as expenses within the District the interest paid to payees within the District, particularly District of Columbia banks, and treated as without the District all interest and debt expense paid to banks and other lenders outside the District of Columbia. The Assessor erroneously treated as expense within the District all interest and long-term debt expense paid, regardless of to whom or where paid.

B. The correct measure of the duties performed and expenses incurred within and without the District of Columbia is the situs of the payee to whom such interest and long-term debt expense was paid.

WHEREFORE, Petitioner prays that this Court may hear this proceeding and order that:

A. The Assessor erred in disallowing expenses of the taxpayer, Lincoln Service Corporation, for the fiscal year ended June 30, 1958, in the amount of $385,315.74, and for the period ended March 16, 1959, in the amount of $384,671.71, in computing the net taxable income of the taxpayer within the District, as shown in the deficiency notice attached hereto as Exhibit A.

B. The Assessor erred in increasing the apportionment factor for the fiscal year ended June 30, 1958 from .3224% to .882348%, and for the period ended March 16, 1959 from .3524% to .848295% and, in particular, treating as a District expense all interest paid by the taxpayer, Lincoln Service Corporation, as set out in the deficiency notices attached hereto.

C. The deficiency assessments made on February 28, 1964 for the fiscal year ended June 30, 1958 in the sum of $29,910.67, plus $10,169.63 interest, and for the period ended March 16, 1959 in the sum of $20,674.31, plus interest of $6,098.92, be cancelled and the respective amounts thereof be refunded Petitioner, with interest thereon from May 21, 1964, the date on which said payments were made.

OSCAR C. MITCHELL
Oscar C. Mitchell, *Assistant Treasurer*
State Loan and Finance Corporation
1200-18th Street, N. W.
Washington, D. C.

CARL F. BAUERSFELD
Carl F. Bauersfeld
Attorney for Petitioner
1921 Eye Street, N. W.
Washington, D. C.

DISTRICT OF COLUMBIA ss.

Oscar C. Mitchell, being duly sworn, says that he is the Assistant Treasurer of the Petitioner corporation above-named, and that he is duly authorized to verify the foregoing Petition; that he has read the foregoing Petition and is familiar with the statements contained therein and that the statements therein are true to the best of his knowledge and belief.

OSCAR C. MITCHELL

Subscribed and sworn to before me, a Notary Public in and for the District of Columbia, this 22nd day of May, 1964.

H. S. JONES
Notary Public
(SEAL) My Commission Expires Oct. 14, 1968

EXHIBIT A

STATE LOAN AND FINANCE CORPORATION

Successor by merger to Lincoln Service Corporation
1200 – 18th St., N. W.
Washington 6, D. C.

	Fiscal Year and/or Period Ended June 30, 1958	March 16, 1959
Net Income subject to apportionment per form D-20	$ 461,089.23	$ 176,420.95
Add: Deductions disallowed*	385,315.74	384,671.71
Revised net income subject to apportionment	$ 846,404.97	$ 561,092.66
Multiply by apportionment factor**	.882348	.848295
Revised net D. C. taxable income	$ 746,823.73	$ 475,972.10
Tax @ 5%	$ 37,341.19	$ 23,798.61
Less: Tax reported	7,430.52	3,124.30
Deficiency	$ 29,910.67	$ 20,674.31

* Computation of Deductions disallowed:

A) Total gross income per form D-20	$2,586,465.59	$1,945,391.56
B) Total dividend income per form D-20	698,890.14	700,159.00
C) Factor (B ÷ A)	.270210	.359906
Total deductions claimed	$1,426,486.22	$1,068,811.61
Less: Salary expense disallowed	500.00	—0—
Revised Total deductions	$1,425,986.22	$1,068,811.61
Multiplied by factor from above	.270210	.359906
Deductions disallowed	$ 385,315.74	$ 384,671.71

Deductions are allowed only to the extent that they are applicable to income from sources within the District within the meaning of Title X of the Act. See Title III, Sec. 3(a)(14) of the D. C. Income and Franchise Tax Act of 1947, as amended.

** There is no change in the apportionment factor since it is deemed that the deductions disallowed were incurred both within and without the District in proportion to the computation of the apportionment factor set forth in our Deficiency Notice dated February 5, 1962.

EXHIBIT B

STATE LOAN AND FINANCE CORPORATION

Successor by merger to Lincoln Service Corporation
1200 – 18th St., N. W.
Washington 6, D. C.

Excerpt from proposed Deficiency Notice dated February 5, 1962:

	Fiscal Year (Period) Ended June 30, 1958	Fiscal Year (Period) Ended March 16, 1959
• • • •		
* Computation of revised apportionment factor:		
A) Total costs and expenses incurred everywhere, per form D-20	$1,426,486.22	$1,068,811.61
B) Total costs and expenses incurred in D. C., per form D-20	$ 459,943.86	$ 376,458.51
Add: Interest expense excluded	786,601.10	521,758.71
Amortized long-term debt expense excluded	12,112.87	8,450.48
Total	$1,258,657.83	$ 906,667.70
C) Factor B ÷ A	.882348	.848295

• • • •

We believe the above computation reflects your correct D. C. tax liability. In computing the apportionment factor, we feel that all interest expense and long-term debt amortization should be allocated to the District.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
FINANCE OFFICE • Revenue Division

INCOME AND FRANCHISE TAX

COPY 1A - TAXPAYER'S COPY

TYPE TAX	ACCOUNT NUMBER	REF.	TYPE TAX	TAX YEAR	DATE	
I - Individual Income D - Declaration Payment H - Corporation J - Unincorporated Business F - Fiduciary E - Employer Withholding	1972		H	6/30/58	2/28/64	

NAME AND ADDRESS	TOTAL TAX DOLLARS	TOTAL TAX CTS.	CREDIT DOLLARS	CREDIT CTS.	INTEREST TO	PAYMENT DUE DOLLARS	PAYMENT DUE CTS.
STATE LOAN AND FINANCE CORPORATION SUCCESSOR BY MERGER TO: LINCOLN SERVICE CORPORATION 1200 18TH STREET NW WASHINGTON, D.C.	29,910 9,720	67 97			3/15/64	39,631	64
					Interest at rate of ½ of 1% per month or portion thereof from to 6/15/64	448	66
					TOTAL PAYMENT DUE →	40,080	30

Interest on payment due at the rate of ½ of 1% per month or portion thereof must be added if not paid on or before the interest date shown on this bill. Late filing penalty is computed at 5% per month or portion thereof (maximum 25%), except type tax E which is a flat 25%.

Make check payable to D. C. TREASURER. Send check or money order to FINANCE OFFICE, REVENUE DIVISION, Municipal Center, Washington 1, D. C.

FP: 56 (9/60) Your cancelled check is your receipt.

KEEP THIS COPY

DATE PAID UNDER PROTEST
ITEM, ETC. 094
AMOUNT $ 40,080.30

EXHIBIT C

EXHIBIT D

COPY 1A – TAXPAYER'S COPY

GOVERNMENT OF THE DISTRICT OF COLUMBIA
FINANCE OFFICE • Revenue Division

• INCOME AND FRANCHISE TAX

TYPE TAX: I - Individual Income; D - Declaration Payment; H - Corporation; J - Unincorporated Business; F - Fiduciary; E - Employer Withholding

ACCOUNT NUMBER	REF.	TYPE TAX	TAX YEAR	DATE	
1972		H	3/16/59	2/28/64	

NAME AND ADDRESS	TOTAL TAX DOLLARS	TOTAL TAX CTS.	CREDIT DOLLARS	CREDIT CTS.	INTEREST TO	PAYMENT DUE DOLLARS	PAYMENT DUE CTS.
STATE LOAN AND FINANCE CORPORATION SUCCESSOR BY MERGER TO: LINCOLN SERVICE CORPORATION 1200 18th STREET NW WASHINGTON, D C	20,674 5,788	31 81			3/15/64	26,463	12
Interest at rate of ½ of 1% per month or portion thereof from to 6/15-64						310	11
TOTAL PAYMENT DUE →						26,773	23

Interest on payment due at the rate of ½ of 1% per month or portion thereof must be added if not paid on or before the interest date shown on this bill. Late filing penalty is computed at 5% per month or portion thereof (maximum 25%), except type tax E which is a flat 25%.

Make check payable to D. C. TREASURER. Send check or money order to FINANCE OFFICE, REVENUE DIVISION, Municipal Center, Washington 1, D. C.

FF: 54 (9/60) Your cancelled check is your receipt.

KEEP THIS COPY

PAID UNDER PROTEST OF ITEM, ETC. 015 #14 AMOUNT $26,773.23

[Filed July 6, 1964]

Answer

Answering the allegations contained in the complaint, paragraph by paragraph, respondent states as follows:

1, 2, 3 and 4. Respondent admits the allegations contained in paragraphs 1 through 4 of the complaint.

5. Respondent admits the first two sentences of subparagraph A of paragraph 5 of the complaint. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the third, fourth, and fifth sentences of subparagraph A of paragraph 5 of the complaint.

Respondent admits the allegations contained in the sixth sentence of subparagraph A of the complaint.

Respondent admits the allegations contained in subparagraphs B, C, and D of paragraph 5 of the complaint.

Respondent denies that the assessor erroneously changed the method of determining "net taxable income" but admits the remaining allegations contained in subparagraph E of paragraph 5 of the complaint.

Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of subparagraph F of paragraph 5 of the complaint.

Respondent admits the second sentence of subparagraph F of paragraph 5 of the complaint. Respondent admits that during the fiscal year ended June 30, 1958, dividends were received from 22 of the more than 103 subsidiaries of the taxpayer but states that petitioner's allegation that 24 of these subsidiaries paid dividends is incorrect. Respondent admits the fourth sentence of subparagraph F of paragraph 5 of the complaint. Respondent denies the fifth sentence of subparagraph F of paragraph 5 of the complaint.

II.

A. Respondent admits the first sentence of paragraph A of Part II of the complaint, but denies the second sentence of said paragraph.

B. Respondent denies the allegations contained in paragraph B of Part II of the complaint.

Further answering the petition, respondent states:

1. That State Loan and Finance Corporation, hereinafter referred to as petitioner, (successor by merger to Lincoln Service Corporation) is a Delaware corporation with its executive office at 1200 18th Street, N. W., Washington, D. C. Petitioner is engaged in business wholly within the District of Columbia.

2. In the alternative, respondent states that petitioner, if engaged in trade or business within and without the District during the taxable periods in controversy, derived all of its income from trade or business activities conducted within the District of Columbia.

Respondent states that all of petitioner's net income for the fiscal year ended June 30, 1958, and for the fiscal period July 1, 1958, through March 16, 1959, was from District of Columbia sources and as such is subject to District of Columbia Franchise Tax in accordance with the District of Columbia Income and Franchise Tax Act of 1947, as amended.

WHEREFORE, respondent requests the District of Columbia Tax Court to increase the assessment of corporation franchise taxes against petitioner for the fiscal year ended June 30, 1958, by the sum of $20,682.78, plus interest thereon as provided by law, and respondent further requests the District of Columbia Tax Court to increase the assessment of corporation franchise taxes against petitioner for the

fiscal period July 1, 1958, through March 16, 1959, by the sum of $20,030.39, plus interest thereon as provided by law.

s/ CHESTER H. GRAY
Chester H. Gray
Corporation Counsel, D. C.

s/ HENRY E. WIXON
Henry E. Wixon
Assistant Corporation Counsel, D. C.

s/ ROBERT E. MCCALLY
Robert E. McCally
Assistant Corporation Counsel, D. C.
Attorneys for Respondent
District Building
Washington, D. C., 20004

[Filed December 1, 1964]

Stipulation

It is hereby stipulated by and between the parties hereto that the following facts and exhibit may be considered a part of the record in this case as if introduced at the time of the hearing without objection.

1. Attached hereto is a schedule entitled "Lincoln Service Corporation—Allocation of Cost of Supervision Services Within and Without D. C." marked exhibit 3.

2. The names of the officers of Lincoln Service Corporation and their titles during the fiscal year ended June 30, 1958, and the period ended March 16, 1959, were:

Charles Delmar, Chairman of the Board
Ralph G. Blasey, President
Thornton W. Burnet, Vice President and Secretary
Oscar C. Mitchell, Vice President and Treasurer

Raymond V. Hannemann, Comptroller
Frank C. Hallowell, Senior Vice President (1958 only)
Jack C. Guynn, Assistant Secretary

3. Lincoln Service Corporation employed twenty employees within the District of Columbia in addition to the officers listed in paragraph 2 above. It employed twenty-four employees without the District of Columbia.

4. The officers and employees of Lincoln Service Corporation performed duties as follows:

(a) The Chairman of the Board of Lincoln Service Corporation, Mr. Charles Delmar, devoted practically all of his time and effort to the over-all problems of Lincoln, such as raising money and other financial matters, where and when to expand the business, and stockholder relations. It is estimated that 95% of his time was given to the activities of Lincoln and 5% to the day by day supervision of Lincoln's subsidiaries.

(b) The President of Lincoln, Ralph G. Blasey, devoted practically all of his time and effort to the over-all supervision of Lincoln's subsidiaries. He was in charge of rendering the management service and seeing that it was properly carried out. It is estimated that 95% of his time was given to supervision of the subsidiaries and 5% to the other affairs of Lincoln.

(c) The Senior Vice President, Mr. Frank C. Hollowell, during the fiscal year ended June 30, 1958, assisted the President, Mr. Blasey, and devoted his time and effort in the same manner as Mr. Blasey.

(d) Mr. Thornton Burnet, Vice President and Secretary, devoted a large part of his time to long-term financing, including handling the affairs of Lincoln before the Securities and Exchange Commission, purchasing of supplies and advertising. He had the normal duties of a Secretary of corporation with respect to meetings, minutes, stockholder relations. It is estimated that 80% of Mr. Burnet's

time was given to Lincoln Service Corporation and 20% to the supervision of Lincoln's subsidiaries.

(e) Mr. Oscar C. Mitchell, Vice President and Treasurer, devoted a large part of his time to the day by day short-term bank borrowing, prepared stockholder dividend checks, paid Lincoln's bill and had complete charge of Lincoln's bank accounts. He handled the subsidiaries' borrowings from Lincoln. It is estimated that 75% of Mr. Mitchell's time was given to supervision of the subsidiaries and 25% of his time to Lincoln's other affairs.

(f) Mr. Raymond V. Hannemann, was the Comptroller of Lincoln Service Corporation. He was in charge of all the bookkeeping for Lincoln and the subsidiaries. It is estimated that 95% of his time was given to supervision of the 105 subsidiaries' books and records and 5% to Lincoln.

(g) Mr. Guynn, Assistant Secretary of Lincoln, reviewed payroll and personal records from the field and carried out the normal duties of an Assistant Secretary of a corporation. It is estimated that Mr. Guynn gave 25% of his time and effort to supervision of the subsidiaries and 75% of his time to the other affairs of Lincoln.

(h) "Other D. C. empolyees." These consist of secretaries to the officers, bookkeepers and clerks, receptionist and messenger. The largest number of these employees were bookkeepers and clerks under the Comptroller. It is estimated that these employees over-all devoted 80% of their time to supervision of the subsidiaries and 20% to the other affairs of Lincoln.

(i) "Outside D. C. Employees." These are the field supervisors who had offices or were headquartered in the states in which the subsidiaries were located. The supervisors would visit each office, investigate thoroughly all loans that had been made since his last visit, go over with the manager of the subsidiary its activities and review

what had been done and try to correct any errors that may have been made. In addition, the supervisor trained and instructed the other personnel in the subsidiary's loan offices as the supervisors are teachers. The supervisors would visit the offices of each subsidiary about every 6 or 8 weeks. All of the supervisors' time was devoted to the subsidiaries.

CARL F. BAUERSFELD
Carl F. Bauersfeld
1921 Eye Street, N. W.
Washington 6, D. C.
Attorney for the Petitioner

s/ ROBERT C. MCCALLY
Robert C. McCally
Assistant Corporation Counsel, D. C.
Attorney for the Respondent

EXHIBIT

LINCOLN SERVICE CORPORATION

ALLOCATION OF COST OF SUPERVISION SERVICES WITHIN AND WITHOUT D.

This is based on an allocation of salaries and supervision expense based on the time the individuals spent in office administration and again broken down within and wthout D.
Fiscal Year Ended 6-30-58

Salary	Name	Time Spent In Supervision	Within D. C.	Without D. C
$ 30,000.00	Charles Delmar	5%—$ 1,500.00	$ 1,391.70	$ 108.30
20,000.00	Ralph G. Blasey	95%— 19,000.00	17,628.20	1,371.80
13,250.00	Thornton W. Burnet	20%— 2,650.00	2,458.67	191.33
10,000.00	Oscar C. Mitchell	75%— 7,500.00	6,958.50	541.50
8,650.00	Raymond V. Hannemann	95%— 8,217.50	7,624.20	593.30
6,600.00	Jack C. Guynn	25%— 1,650.00	1,530.87	119.13
10,668.00	Frank C. Hallowell	95%— 10,134.50	9,402.88	713.72
60,775.73	Other D. C. Employees	80%— 48,620.58	45,110.17	3,510.41
91,046.00	Outside D. C. Employees (supervisors & relief men)	100%— 91,046.00		91,046.00
	Travel & Supervision Expense		3,073.07	30,730.68
$250,989.73			$95,178.26	$128,926.17
		Factor:	42.470%	57.529%
Period Ended 3-16-59				
$ 21,500.00	Charles Delmar	5%—$ 1,075.00	$ 1,016.31	$ 58.69
14,167.00	Ralph G. Blasey	95%— 13,459.00	12,724.14	734.86
9,386.00	Thornton W. Burnet	20%— 1,877.00	1,774.52	102.48
7,083.00	Oscar C. Mitchell	75%— 5,312.00	5,021.96	290.04
6,021.00	Raymond V. Hannemann	95%— 5,720.00	5,407.69	312.31
4,604.00	Jack C. Guynn	25%— 1,151.00	1,088.16	62.84
34,111.91	Other D. C. Employees	80%— 27,289.53	25,799.52	1,490.01
74,663.00	Outside D. C. Employees (supervisors & relief men)	100%— 74,663.00		74,663.00
	Travel & Supervision Expense		213.46	21,345.81
$171,535.91			$53,045.76	$ 99,060.04
		Factor:	34.874%	65.125%

[Filed Jan. 19, 1965]

Opinion No. 1041

Findings of Fact and Opinion

The petitioner, as the successor by merger to Lincoln Service Corporation, here complains of the assessment of deficiencies in franchise taxes for the fiscal year ended June 30, 1958, and the period from July 1, 1958 to March 16, 1959. The respondent has filed an answer, praying for the increase of the assessed deficiencies.

Findings of Fact

1. (a) The petitioner is a Delaware corporation. It merged with Lincoln Service Corporation, hereinafter called "Lincoln", and assumed all of its assets and liabilities.

(b) As a result of the merger Lincoln discontinued its business on March 16, 1959.

2. (a) Lincoln, a Delaware corporation, was a holding and service company, with its principal place of business in the District of Columbia. It was the owner of all or most of the corporate stock of subsidiary corporations engaged in the business of making small loans to individual borrowers.

(b) At the end of the fiscal year ended June 30, 1958, its subsidiaries operated 103 loan offices in eleven states, as follows:

Florida	8	Pennsylvania	26
Georgia	2	South Carolina	3
Kentucky	11	Texas	7
Louisiana	9	Virginia	12
Maryland	12	West Virginia	12
Ohio	1		

(c) As of March 16, 1959, the subsidiaries operated 105 loan offices in eleven states, as follows:

Florida	8	Pennsylvania	27
Georgia	2	South Carolina	3
Kentucky	11	Texas	7
Louisiana	9	Virginia	12
Maryland	13	West Virginia	12
Ohio	1		

(d) None of the lending subsidiaries conducted the business of lending money in the District of Columbia, that is to say, none of the loan offices was located therein.

3. (a) The principal and administrative office of each of the aforesaid subsidiaries was in the District of Columbia. Its officers were officers of Lincoln, and were located in the District of Columbia. With few exceptions as to one director, the directors of each of the subsidiaries were officers or directors of Lincoln and were located in the District; and all the meetings of the directors were held therein. All administrative policies and all business activities of the subsidiaries, except the actual and direct lending of money, were made or carried on in the District, and all of its activities were in general supervised or managed in the District. All of the books and records of the subsidiaries were kept, and all bookkeeping and accounting was done in the District, except reporting by the subsidiaries of the actual lending activities. Checks on deposits of the subsidiaries were determined, declared and paid in the District.

(b) Each of the subsidiaries had a commercial domicile in the District of Columbia.

4. Lincoln derived its revenue or gross income from three sources, namely, (i) interest on loans to subsidiaries, (ii) administrative fees paid by the subsidiaries for supervision and management, and (iii) dividends on the capital stock of the subsidiaries which it held. The amounts thereof received by it during the taxable periods were the following:

	Fiscal Year Ended June 30, 1958	Period Ended March 16, 1959
Interest	$986,806.88	$595,197.03
Administrative Fees	900,768.57	650,035.53
Dividends	698,890.14	700,159.00
Total	$2,586,465.59	$1,945,391.56

5. (a) The expenses incurred by the petitioner for the operation of its business and in the receipt of the aforesaid revenue for the taxable periods were as follows:

	Fiscal Year Ended June 30, 1958	Period Ended March 16, 1959
Compensation of Officers	$104,076.74	$64,541.71
Salaries and Wages	146,912.99	106,994.20
Rent	12,488.04	9,710.95
Interest paid	941,473.49	626,692.53
Taxes	7,405.36	6,122.74
Depreciation	4,833.36	2,321.77
Other Deductions	209,296.24	252,427.71
Total	$1,159,979.37	$876,579.95

(b) Of the amount paid as "Salaries and Wages" the amount of $91,046.00 was paid to supervisors who rendered administrative and supervisory services to the subsidiaries without the District of Columbia for the fiscal year ended June 30, 1958; and $74,663.00 for the period ended March 16, 1959.

6. Lincoln filed franchise tax returns with the assessing authority of the District of Columbia in which it computed the franchise tax which it claimed to be due, and which it computed by assigning or allocating to the District portions of the revenue or gross income and expenses or deductions as follows:

	Year Ended June 30, 1958	Period Ended March 16, 1959
		Gross Income
Interest	$318,146.54	$209,806.94
Administrative Fees	290,407.79	229,137.54
Dividends	None	None
Total	$608,554.33	$438,944.48
		Deductions
Compensation of officers	$96,567.22	$61,023.85
Salaries and wages	52,842.66	38,017.89
Rent	12,842.66	9,710.95
Interest paid	154,872.39	104,933.82
Taxes	7,405.36	2,557.22
Depreciation	4,833.36	2,321.77
Other deductions	130,580.21	157,893.01
Total	$459,943.86	$376,458.51
Net Taxable Income	$148,610.47	$ 62,485.97
Tax (Five per cent)	$7,430.52	$3,124.30

7. (a) On February 28, 1964, the assessing authority assessed the petitioner, as the successor by merger to Lincoln, deficiencies in franchise tax and interest for the taxable periods and in the amounts following:

	Franchise Tax	Interest	Total
Fiscal Year Ended June 30, 1958	$29,910.67	$10,169.63	$40,080.30
Period Ended March 16, 1959	20,674.31	6,098.92	26,773.23

(b) The foregoing deficiencies were computed by the assessing authority as follows:

	Fiscal Year and/or Period Ended June 30, 1958	March 16, 1959
Net Income subject to apportionment per form D-20	$ 461,089.23	$ 176,420.95
Add: Deductions disallowed	385,315.74	384,671.71
Revised net income subject to apportionment	$ 846,404.97	$ 561,092.66
Multiply by apportionment factor	.882348	.848295
Revised net D. C. taxable income	$ 746,823.73	$ 475,972.10
Tax @ 5%	$ 37,341.19	$ 23,798.61
Less: Tax reported	7,430.52	3,124.30
Deficiency	$ 29,910.67	$ 20,674.31
Computation of Deductions disallowed:		
A) Total gross income per form D-20	$2,586,465.59	$1,945,391.56
B) Total divided income per form D-20	698,890.14	700,159.00
C) Factor (B ÷ A)	.270210	.359906
Total deductions claimed	$1,426,486.22	$1,068,811.61
Less: Salary expense disallowed	500.00	- 0 -
Revised Total deductions	$1,425,986.22	$1,068,811.61
Multiplied by factor from above	.270210	.359906
Deductions disallowed	$ 385,315.74	$ 384,671.71

(c) The petitioner paid the foregoing deficiencies and interest on May 21, 1964.

8. This case was filed on May 22, 1964.

OPINION

Lincoln Service Corporation, hereinafter called "Lincoln", was merged with the petitioner, State Loan and Finance Corporation, on March 16, 1959, under a plan whereby the petitioner assumed all of the assets and liabilities of Lincoln. The petitioner was assessed the deficiencies here involved on the basis of that assumption.

The petitioner is, and Lincoln during its existence was what is generally known as a finance holding company. Lincoln had slightly over one hundred subsidiaries in eleven states (none in the District). In most it owned all of the subsidiaries' corporate stock, and in a few others a substantial and controlling portion thereof. It supplied or loaned operating funds to the subsidiaries, and received interest thereon; and received "administrative fees" for managerial and supervisory services performed for the subsidiaries.

Lincoln filed with the assessing authority of the District franchise tax returns for the fiscal year ended June 30, 1958, and for the period from July 1, 1958 to March 16, 1959; wherein it computed franchise taxes due for those periods in the amounts of $7,430.52 and $3,124.30, respectively. It paid those taxes within the time prescribed by law. The taxes were computed as follows:

FISCAL YEAR ENDED JUNE 30, 1958

Gross Income

	Within and Without the District	Within the District
Interest	$ 986,806.88	$ 318,146.54
Administrative fees	900,768.57	290,407.79
Dividends	698,890.14	—
Total	$2,586,465.59	$ 608,554.33

Deductions

Compensation of officers	$ 104,076.74	$ 96,567.22
Salaries and wages	146.912.99	52,842.66
Rent	12,488.04	12,842.66
Interest	941,473.49	154,872.39
Taxes	7,405.36	7,405.36
Depreciation	4,833.36	4,833.36
Other deductions	209,296.24	130,580.21
Total	$1,426,486.22	$ 459,943.86
Net taxable income	$1,159,979.37	$ 148,610.47
Amount of tax (Five per cent)		$ 7,430.52

PERIOD ENDED MARCH 16, 1959

Gross Income

	Within and Without the District	Within the District
Interest	$ 595,197.03	$ 209,806.94
Administrative fees	650,035.53	229,137.54
Dividends	700,159.00	—
Total	$1,945,391.56	$ 438,944.48

Deductions

Compensation of officers	$ 64,541.71	$ 61,023.85
Salaries and wages	106,994.20	38,017.89
Rent	9,710.95	9,710.95
Interest	626,692.53	104,933.82
Taxes	6,122.74	2,557.22
Depreciation	2,321.77	2,321.77
Other deductions	252,427.71	157,893.01
Total	$1,068,811.61	$ 376,458.51
Net taxable income	$ 876,579.95	$ 62,485.97
Amount of tax (Five per cent)		$ 3,124.30

Some time later, that is to say, on February 28, 1964, the assessing authority assessed the petitioner, in its capacity as successor to Lincoln, deficiencies in franchise tax and interest thereon for the taxable periods, and in the amounts following:

	Franchise Tax	Interest	Total
Fiscal Year Ended June 30, 1958	$29,910.67	$10,169.63	$40,080.30
Period Ended March 16, 1959	20,674.31	6,098.92	26,773.23

Those deficiencies were computed by the assessing authority as follows:

	Fiscal Year and/or Period Ended June 30, 1958	March 16, 1959
Net Income subject to apportionment per form D-20	$ 461,089.23	$ 176,420.95
Add: Deductions disallowed	385,315.74	384,671.71
Revised net income subject to apportionment	$ 846,404.97	$ 561,092.66
Multiply by apportionment factor	.882348	.848295
Revised net D. C. taxable income	$ 746,823.73	$ 475,972.10
Tax @ 5%	$ 37,341.19	$ 23,798.61
Less: Tax reported	7,430.52	3,124.30
Deficiency	$ 29,910.67	$ 20,674.31

Computation of Deductions disallowed:

A) Total gross income per form D-20	$2,586,465.59	$1,945,391.56
B) Total divided income per form D-20	698,890.14	700,159.00
C) Factor (B ÷ A)	.270210	.359906
Total deductions claimed	$1,426,486.22	$1,068,811.61
Less: Salary expense disallowed	500.00	- 0 -
Revised Total deductions	$1,425,986.22	$1,068.811.61
Multiplied by factor from above	.270210	.359906
Deductions disallowed	$ 385,315.74	$ 384,671.71

The petitioner paid the two deficiencies and here seeks refund thereof on the bases following:

(a) The Assessor erred in disallowing deductions in the amount of $385,315.74 for the fiscal year ended June 30, 1958 and $384,671.71 for the period ended March 16, 1959 in computing "revised net D. C. taxable income," as set out in the notice of deficiency.

(b) The Assessor erred in increasing the apportionment factor from .3224% for the fiscal year ended June 30, 1958, as set out in the return as filed, to .882348%, and increasing it from .3525%, as set out in the return filed for the period July 1, 1958 through March 16, 1959, to .848295%.

On the other hand, the respondent not only opposes the claim of the petition, but has filed an answer praying the Court to increase the deficiency for the fiscal year ended June 30, 1958 by $20,682.78, and the deficiency for the period ended March 16, 1959, by $20,030.39. As a bases for that claim or prayer the respondent states in the answer the following:

> 1. That State Loan and Finance Corporation, hereinafter referred to as petitioner, (successor by merger to Lincoln Service Corporation) is a Delaware corporation with its executive office at 1200 18th Street, N. W., Washington, D. C. Petitioner is engaged in business wholly within the District of Columbia.
>
> 2. In the alternative, respondent states that petitioner, if engaged in trade or business within and without the District during the taxable periods in controversy, derived all of its income from trade or business activities conducted within the District of Columbia.
>
> Respondent states that all of petitioner's net income for the fiscal year ended June 30, 1958, and for the fiscal period July 1, 1958, through March 16, 1959, was from District of Columbia sources and as such is subject to District of Columbia Franchise Tax in accordance with the District of Columbia Income and Franchise Tax Act of 1947, as amended.

As will be seen from Lincoln's computation of its net taxable income, its revenue or gross income consisted of three kinds or classes, namely, "interest", "administrative fees" for supervisory and managerial services performed for its subsidiaries, and "dividends". The question which here presents itself is "where was the source or locale of that income?" The Court will now proceed to answer that question.

Interest and Dividends. These two classes of revenue are combined for discussion because the rules or principles relating to the source of interest and dividend income are the same, or to be more exact, one and the same rule or principle applies to both. That rule or principle in respect of interest is that the source of interest income is the domicile of the debtor, and as to dividends it is the domicile or locale of the paying or issuing corporation.

In *The Virginia Hotel Co.*, v. *District of Columbia*, Docket Nos. 1302, 1303, 1304 and 1305 (Opinion No. 819) this Court had occasion to consider the question of the source of interest on a note secured by an encumbrance on real estate in the District of Columbia and paid to a domiciliary of the District. From the opinion of the Court in those cases is the following:

> "After all, what the United States Tax Court determined, and what this Board is trying to determine is whether certain interest payments were income from sources within a certain geographical area—United States in one instance, the District of Columbia in the other. The decisions of the United States Tax Court uniformally held that the domicile or residence of the obligor was the source of interest income.
>
> "The Court believes that the better and more logical rule is stated in *Standard Marine Insurance Co., Ltd.*, 4 B.T.A. 853; *Marine Insurance Co., Ltd.*, 4 B.T.A. 867; Estate of *L. E. McKinnon*, 6 B.T.A. 412; *Ocean Accident & Guarantee Company Corp. Ltd.*, 13 B.T.A. 1047, and *Sumitomo Bank, Ltd.*, 19 B.T.A. 480, namely, that the source of interest income is the obligor and its situs is his residence.
>
> "The respondent contends that the receipt of interest by the petitioner was a part of the regular trade or business of the petitioner, on the stated premise that the sale of the Willard Hotel was in the ordinary course of the taxpayer's trade or business under the decision of the Court of Appeals in *Robb* v. *District of Columbia*, 80 U.S. App. D.C. 246, 152 F.2d 283. The Court cannot agree with that contention, but even if it

were sound, interest income would not for that reason have its source within the District of Columbia. In many of the U.S. Tax Court cases cited above the obligation upon which the interest was paid arose out of business conducted in the United States, while the source of the interest income was held to be without the United States.

"Inasmuch as the tax here under consideration is imposed upon a privilege and, therefore, an excise, Congress could have made the measure of the tax almost any event, act or condition. It could have based the tax upon interest on encumbrances secured on real estate in the District, or from notes held by note holders in the District or from notes physically in the District or on notes which, as does the note here involved, provides that the interest is payable in the District. None of these measures or bases were adopted by Congress. Instead it provided that for the privilege of engaging in business and receiving income the corporation should pay a certain percentage on net income from sources within the District of Columbia.

"While not controlling, it is significant and persuasive that in later Revenue Acts and in Section 119 of the Internal Revenue Code, Congress has provided that the source of interest income is the residence of the obligor. Such provisions were declaratory of the law as laid down in the earlier decisions of the United States Tax Court upon which the Board relied in its decision in Docket No. 1280, and were a recognition and affirmance by Congress of the principles therein announced, *A. C. Mink,* 10 T.C. 77, 83.

"The Board in deciding the proceeding Docket No. 1280, did not rely entirely on the decisions of the United States Tax Court, but cited the well known work of *Merten's Law of Federal Income Taxation*, and the well reasoned decision of the Supreme Court of Missouri in *Petition of Union Electric Company of Missouri,* 161 S.W. 2d 968, 971, 972.

"The Court does not believe, as did the former Member Sole in *Community Finance Corporation* v. *District of Columbia,* Docket No. 738, that the omission

of the provisions of Section 119 from District of Columbia Revenue Act was indicative of Congress' intention that such provisions not obtain in the District. The Federal Revenue Acts are more detailed and complicated than those of the District, and there are many provisions of the Federal law declaratory of principles of tax law applicable to the District of Columbia that are not found in the District of Columbia Revenue Acts.

"Resort must be had to the ordinary meaning of the term 'sources'. As Judge Goodrich said in *Lord Torres,* 25 B.T.A. 154, 161, 'The commonly accepted definition of the term "source" is 'that from which anything comes forth, regarded as its cause or origin, the first cause.' Webster's New International Dictionary," And in Funk & Wagnalls New College Standard Dictionary (1947) we find the word 'source' defined as '1. *That from which any act, movement, or effect proceeds; an originator, creator, origin.* * * * * * * 5. *The iniciator of a payment, dividend, etc.*' The interest income here involved did not originate or flow from the real estate which secured the note, nor from the business conducted by the holder of the note or from the note itself, regardless of where the note is held or where the interest is payable. It originated and flowed from the obligors on the note."

In a later case, *Consolidated Title Corp.* v. *District of Columbia,* 87 W.L.R. 288 (Opinion 962) the Court had before it the matter of the source of dividend income. It was there held that the source of the dividends involved was the domicile of the paying or issuing corporation. This is what the Court said:

"The principles relating to the situs of dividends are essentially the same as those concerning the taxable locale of interest. Statutes and treatises treat of them together as having the same characteristics or natures. Both involve the use of money and a person or corporation obligated to pay for its use or retention. The domicile of the obligor in both instances in a taxable situs, which does not mean, of course, that some other jurisdiction may not also impose taxes on or in relation thereto. *Curry* v. *McCanless, supra; Graves* v. *Elliott,*

supra, and *State Tax Com. of Utah* v. *Aldrich, supra.*

"Judge Kern clearly stated the correct rule or principle in *A. C. Monk & Co.,* 10 T.C. 77, 80, as follows:

> " 'Petitioner strenuously argues, however, that the facts presented by the evidence disclose that the actual source and the only possible source of the payments to Pun was in China. It was there that the petitioner's products were sold by Pun, the proceeds therefrom deposited in petitioner's Chinese bank deposits, and the expenses of the petitioner's Chinese branch, including the interest payments to Pun, were paid by checks drawn in China on Chinese banks.
>
> " 'We are unable to agree with this argument.
>
> " 'The use of the money deposited with petitioner by Pun gave rise to the obligation of petitioner to pay the interest here involved. This obligation has its source in the obligor, and thus the source of the payment of the obligation is the residence of obligor. There the right to payment arises and there the right may be enforced. The only qualification is that the payment be actually made by the resident obligor or in its behalf and pursuant to its obligation. See *Tonopah & Tidewater R. R. Co., Ltd.,* 39 B.T.A. 1043; reversed, 112 Fed. (2d) 970.
>
> " 'The fact that for the mutual convenience of petitioner and Pun the payments were made in China by checks drawn on Chinese banks is irrelevant.
>
> " 'For a general discussion of this point see Mertens Law of Federal Income Taxation, par. 45.29 and cases cited, including *Standard Marine Insurance Co., Ltd.,* 4 B.T.A. 853, 862; *Marine Insurance Co., Ltd.,* 4 B.T.A. 867; *Estate of L. E. McKinnon,* 6 B.T.A. 412, 413; *Sumitomo Bank, Ltd.* v. *Commissioner,* 19 B.T.A. 480, 484.'

"See also *Petition of Union Electric Company of Missouri,* (Supreme Court of Missouri), 161 S.W. 2d 968, 971, 972. For a thorough discussion of United States Tax Court decisions on this subject see the

opinions of this Court in *Virginia Hotel Co.* v. *District of Columbia,* D.C.B.T.A., Docket No. 1280; *Virginia Hotel Co.* v. *District of Columbia,* D.C.T.C., Docket No. 1303 (reversed on other grounds, 92 U.S. App. D.C. 186, 204 F.2d 390, 81 W.L.R. 1187), wherein it was held that interest on a note of individuals domiciled without the District of Columbia was not from sources within the District, regardless of the fact that real estate securing the note was located in the District, and the interest was payable at a bank therein. The Court, therefore, holds that the petitioner was liable for income taxes upon the net income represented by the dividends, less the appropriate deductions, for the calendar years 1939 to 1946, inclusive, under the District of Columbia Revenue Act of 1939."

The *Consolidated Title Corp.* case was appealed to the United States Court of Appeals in *Consolidated Title Corporation* v. *District of Columbia,* 107 U.S. App. D.C. 221, 275 F.2d 885, 88 W.L.R. 277, and was affirmed by that court. Judge Edgerton, in sustaining the decision below, stated (p. 2):

"The Tax Court held, and we agree, that petitioner received its income from 'sources within the District' and was therefore subject to these taxes. The 'sources' were petitioner's subsidiary corporations. Since they had their principal offices and businesses in the District they were 'within the District'; they were "domiciled" therein, corporately and commercially', as the Tax Court found. It is immaterial that some of their business was done elsewhere. We are not concerned with the source of *their* income, but only with the sources of petitioner's income. Cf. *Eastman Kodak Co.* v. *District of Columbia,* 76 U.S. App. D.C. 339, 340, 131 F.2d 347-348. We need not consider whether petitioner was 'engaging in * * * business within the District' within the meaning of the franchise tax. Cf. *District of Columbia* v. *Virginia Hotel Co.,* 92 U.S. App. D.C. 186, 187, 204 F.2d 390, 391."

Both the interest and the dividend income were paid to Lincoln by its subsidiaries. That fact raises this question:

were the subsidiaries domiciled in the District of Columbia? They were not, of course, corporately domiciled therein, since they were incorporated in the several states. The question of commercial domicile, however, is a different matter. It calls for an examination and consideration of the facts concerning their conduct and operations.

As far as the actual lending activities of the subsidiaries were concerned, they were carried on outside the District. The powers and the business activities of the subsidiaries did not, however, end there. The principal office of each was in the District of Columbia, wherein its books and records were kept and its bookkeeping done. In those offices all of its business policies of general nature were conceived and adopted. All of its officers were located therein. Most if not all of its directors were either officers or directors of Lincoln and were located in the District of Columbia, and all of the directors' and stockholders' meetings were held in the District. All dividends were determined and paid in the District of Columbia.

In light of those facts the Court believes that each of the subsidiaries of Lincoln had a commercal domicile in the District of Columbia during the taxable periods here involved. As was said by Chief Justice Shepard in *Ferguson Contracting Co.* v. *Coal & Coke Ry. Co.*, 33 App. D.C. 159, 169, "A corporation is usually created and empowered to engage in some particular business or enterprise, but it necessarily exercises many powers, and transacts many matters of business, incidental to the main object. It has the power, therefore, not only to establish offices for the conduct of its chief business, but also for the transaction of any business incidental thereto. *Re Hohorst,* 150 U.S. 653, 663, 37 L.ed. 1211, 1215, 14 Sup. Ct. Rep. 221; *Ricketts* v. *Sun Printing & Pub. Asso.*, 27 App. D.C. 222, 226."

The *Ferguson Contracting Company* case involved a West Virginia corporation which was organized to conduct, and did conduct a railroad in that state, but which main-

tained in the District of Columbia an office for the general management and supervision of that railroad. On pages 170 and 171 we find the ruling following:

> "For a stronger reason, we think, the maintenance of an office in the District for the performance by the general officers of their duties of management and supervision of the affairs of the corporation amounts to doing business therein within the meaning of the Code.
>
> "That said office was maintained, primarily, for the convenience of the president and treasurer, who chose, for social purposes, to remain in the city of Washington during the greater portion of the year, is, in our opinion, immaterial. Their convenience was made that of the corporation also. Recognizing the fact that business would be transacted in said office in the promotion of its objects, the corporation paid 70 per cent of the office rent.
>
> "The substantial transfer of the general corporation management and supervision to that office, though primarily intended for the convenience of the managing officers, was approved by the corporation, and it cannot escape the legal consequences of its acts."

The leading case on "commercial domicile" of corporations is perhaps, *Wheeling Steel Corporation* v. *Fox,* 298 U.S. 193, 56 S.Ct. 773, 80 L.ed. 1143. The first paragraph of the third proposition in the opinion by Mr. Chief Justice Hughes is the following (p. 211):

> "*Third.* — The Corporation[1] established in West Virginia what has aptly been termed a 'commercial domicile'. It maintains its general business offices at Wheeling and there it keeps its books and accounting records. There its directors hold their meetings and its officers conduct the affairs of the Corporation. There, as appellant's counsel well says, 'the management functioned'. The Corporation has manufacturing plants and sales offices in other states. But what is done at those plants and offices is determined and con-

[1] Wheeling Steel Corporation was a Delaware corporation.

trolled from the center of authority at Wheeling. The Corporation has made that the actual seat of its corporate government."

In a later case, *First Bank Stock Corporation* v. *State of Minnesota,* 301 U.S. 234, 57 S.Ct. 1061, 81 L.Ed. 1061, 113 A.L.R. 228, the corporation involved was organized under the laws of Delaware, but was held to be commercially domiciled in Minnesota. The rational of that ruling appears in the excerpt from the opinion by Mr. Justice Stone, as follows:

"Appellant is qualified to do business in Minnesota, and in fact transacts its corporate business and fiscal affairs there. It maintains a business office within the state and holds there its meetings of stockholders, directors, and their executive committee. It is the owner of a controlling interest in the stock of a large number of banks, trust companies, and other financial institutions, located in the Ninth Federal Reserve District. The stock certificates are kept in Minnesota, where appellant receives dividends declared by its subsidiaries, and where it declares and disburses dividends upon its own stock.

"Through a wholly-owned subsidiary corporation, organized and doing busines in Minnesota, it maintains a compensated service for the banks which it controls. It offers advice as to their accounting practices, makes recommendations concerning loans, commercial paper and interest rates, and makes suggestions regarding their purchase and sale of securities. It also plans for them advertising campaigns, and supplies advertising material. Appellant thus maintains within the state an integrated business of protecting its investments in bank shares, and enhancing their value, by the active exercise of its power of control through stock ownership of its subsidiary banks.

"Appellant is to be regarded as legally domiciled in Delaware, the place of its organization, and as taxable there upon its intangibles, see Cream of Wheat Co. v. Grand Forks County, 253 U.S. 325, 328, 40 S.Ct. 558, 64 L.Ed. 931; Johnson Oil Refining Co. v. Oklahoma,

290 U.S. 158, 161, 54 S.Ct. 152, 153, 78 L.Ed. 238; Virginia v. Imperial Coal Sales Co., 293 U.S. 15, 19, 55 S.Ct. 12, 13, 79 L.Ed. 171, at least in the absence of activities identifying them with some other place as their 'business situs.' But it is plain that the business which appellant carries on in Minnesota, or directs from its offices maintained there, is sufficiently identified with Minnesota to establish a 'commercial domicil' there, and to give a business situs there, for purposes of taxation, to intangibles which are used in the business or are incidental to it, and have thus 'become integral parts of some local business.' Wheeling Steel Corporation v. Fox, 298 U.S. 203, 210, 56 S.Ct. 773, 777, 80 L.Ed. 1143; see Farmers' Loan & Trust Co. v. Minnesota, 280 U.S. 204, 213, 50 S.Ct. 98, 101, 74 L.Ed. 371, 65 A.L.R. 1000; Beidler v. South Carolina Tax Commission, 282 U.S. 1, 8, 51 S.Ct. 54, 55, 75 L.Ed. 131; First National Bank v. Maine, 284 U.S. 312, 331, 52 S.Ct. 174, 178, 76 L.Ed. 313, 77 A.L.R. 1401."

Memphis Natural Gas Co. v. *Beeler et al.*, 315 U.S. 649, 62 S.Ct. 857, 86 L.Ed 1090, likewise involved a Delaware corporation held to have a commercial domicile in another state. Mr. Chief Justice Stone in speaking for the Supreme Court stated:

"Taxpayer is licensed by the State of Tennessee to do business there. It maintains a statutory office in Delaware and a stock transfer office in New York City, but conducts no business at either. It manages its business from its office in Memphis, Tennessee, where it keeps its accounts, provides for the payroll of employees on its line in Tennessee and other states, and prepares and sends out bills for gas delivered in Tennessee and other states. It has thus established a commercial domicile in Tennessee by virtue of which it is subject to taxation there upon its intangibles, unless such taxation infringes the commerce clause. *Wheeling Steel Corp.* v. *Fox*, 298 U.S. 193."

Cf. *J. J. Harris & Co., Inc.* v. *Vincent L. Browner, City Assessor,* Supreme Court of Iowa, No. 180/51366, decided October 20, 1964; *Gormully & Jeffrey Mfg. Co.* v. *Pope Mfg. Co.*, 34 F. 818, 820.

While it is true that *Ferguson Contracting Co.* v. *Coal & Coke Ry. Co., supra,* involved the service of process, and the cited three Supreme Court cases sustained the taxation of the corporation's intangibles by the states in which they had acquired a commercial domicile, the Court is of the opinion, and here holds that the commercial domicile of the subsidiaries in the District of Columbia was sufficient to support a ruling that the interest and dividends paid or issued by them were income from sources within the District under the principles announced in the *Virginia Hotel Company* and *Consolidated Title Corp.* cases and under Section 47-1571a,[2] District of Columbia Code, 1960 Edition, which provides:

> "For the privilege of carrying on or engaging in any trade or business and of receiving income from sources within the District, there is hereby levied for each taxable year a tax at the rate of 5 per centum upon the taxable income of every corporation, domestic or foreign (except those expressly exempt under section 47-1554)."

"Taxable income" as defined in Section 47-1571[3] of the Code is as follows:

> "For the purposes of this title and unless otherwise required by the context, the words 'taxable income' mean the amount of net income derived from sources within the District within the meaning of Sections 47-1580 to 47-1580b."

Under Sections 47-1580 to 47-1580b, the taxable net income is that "fairly attributable to any trade or business carried on or engaged in within the District *and such other net income as is derived from sources within the District*".

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2 Section 2 of Title VII of Article I of District of Columbia Income and Franchise Tax Act of 1947.

3 Section 1, ibid.

The petitioner has in its supplemental brief cited several cases in support of its contention that its subsidiaries were not commercially domiciled in the District of Columbia, but, inferentially, in the various localities in which they conduct their respective lending businesses. The Court has studied those cases and does not believe that they are helpful in solving the problem here present. This case is not one where the books and records happened to be kept, or where directors' and stockholders' meetings only were held, or merely where some or all of the officers or stockholders reside. In this case every corporate and business activity of the subsidiaries, except the actual lending of money, was carried on in the District of Columbia. Herein was the heart, the headquarters of each of the subsidiaries. Every corporate move of the subsidiaries and all of their policy decisions were made in the District. All bookkeeping was done here; all of their expenditures were herein authorized and all payments were made from the Washington office. All dividends were declared and paid therefrom. All of the subsidiaries' officers carried out their official and corporate duties here and all stockholders' and directors' meetings were held herein. A clearer case for a determination of a commercial domicile is difficult to imagine.

Administrative Fees. Lincoln performed managerial services including financing, bookkeeping and other business services, and supervisory services for its subsidiaries, for which it charged and received from the subsidiaries what are called "administrative fees". For the fiscal year ended June 30, 1958, Lincoln received as administrative fees the amount of $900,768.57, and for the period ended March 16, 1959, fees in the amount of $650,035.53. The services for which the administrative fees were paid were preformed partly within and partly without the District of Columbia, and for which expenses were incurred. The facts must be examined and there must be determined the proportion of those services that were performed in the District and the expenses which can be reasonably

allocated to that portion. Such an inquiry and determination are required by Section 10-2(c)2 of the regulations pertaining to the District of Columbia Income and Franchise Tax Act of 1947 which provides as follows:

> "(2) Where income for any taxable year is derived from work done or services performed, the portion thereof to be apportioned to the District shall be such percentage of the total of such income as the aggregate of charges for or costs of such work done and services performed in the District bears to the aggregate of such charges for or costs of work done and services performed by the taxpayer everywhere. The Assessor is authorized to use the aggregate of 'charges' or the aggregate of 'costs' with respect to work done and services performed if in his opinion it will produce an equitable apportionment."

And by Section 47-1557b(a)(14) which is in the language following:

> "*Allocation of deductions.*—In the case of corporations and unincorporated businesses, the deductions provided for in this section shall be allowed only for and to the extent that they are connected with income arising from sources within the District within the meaning of sections 47-1580 to 47-1580b, and the proper apportionment and allocation of the deductions to be allowed shall be determined by the Assessor under formula or formulas provided for in section 47-1580a."

The parties have stipulated in respect of compensation of officers and employees who were engaged in supervision of the subsidiaries and the time spent in performing that service both within and without the District of Columbia as follows:

LINCOLN SERVICE CORPORATION

ALLOCATION OF COST OF SUPERVISION SERVICES WITHIN AND WITHOUT D. C.

This is based on an allocation of salaries and supervision expense based on the time of the individuals spent in office administration and again broken down within and wthout D. C.
Fiscal Year Ended 6-30-58

Salary	Name	Time Spent In Supervision	Within D. C.	Without D. C.
$ 30,000.00	Charles Delmar	5%—$ 1,500.00	$ 1,391.70	$ 108.30
20,000.00	Ralph G. Blasey	95%— 19,000.00	17,628.20	1,371.80
13,250.00	Thornton W. Burnet	20%— 2,650.00	2,458.67	191.33
10,000.00	Oscar C. Mitchell	75%— 7,500.00	6,958.50	541.50
8,650.00	Raymond V. Hannemann	95%— 8,217.50	7,624.20	593.30
6,600.00	Jack C. Guynn	25%— 1,650.00	1,530.87	119.13
10,668.00	Frank C. Hallowell	95%— 10,134.50	9,402.88	713.72
60,775.73	Other D. C. Employees	80%— 48,620.58	45,110.17	3,510.41
91,046.00	Outside D. C. Employees (supervisors & relief men)	100%— 91,046.00		91,046.00
	Travel & Supervision Expense		3,073.07	30,730.68
$250,989.73			$95,178.26	$128,926.17
		Factor:	42.470%	57.529%
Period Ended 3-16-59				
$ 21,500.00	Charles Delmar	5%—$ 1,075.00	$ 1,016.31	$ 58.69
14,167.00	Ralph G. Blasey	95%— 13,459.00	12,724.14	734.86
9,386.00	Thornton W. Burnet	20%— 1,877.00	1,774.52	102.48
7,083.00	Oscar C. Mitchell	75%— 5,312.00	5,021.96	290.04
6,021.00	Raymond V. Hannemann	95%— 5,720.00	5,407.69	312.31
4,604.00	Jack C. Guynn	25%— 1,151.00	1,088.16	62.84
34,111.91	Other D. C. Employees	80%— 27,289.53	25,799.52	1,490.01
74,663.00	Outside D. C. Employees (supervisors & relief men)	100%— 74,663.00		74,663.00
	Travel & Supervision Expense		213.46	21,345.81
$171,535.91			$53,045.76	$ 99,060.04
		Factor:	34.874%	65.125%

The Court believes that it is reasonable, in light of the stipulated facts, to hold that 42.47 per centum of the administrative services was performed within the District of Columbia, and was properly includible in gross income of Lincoln; and 57.53 per centum without the District and properly excludable, for the fiscal year ended June 30, 1958; and for the period ended March 16, 1959, 34.87 per centum within and 65.13 without the District, with like result. The same percentages apply to expenses relating to supervision as reflected in the items of compensation for supervisory services in the foregoing schedule, for example, 57.53 per centum of compensation for supervisory services for the fiscal year ended June 30, 1958 was not properly deductible in computing net income of Lincoln for that taxable year.

Conclusion. For the reasons stated the Court holds as follows:

(a) All of the interest paid to Lincoln by its subsidiaries is properly includible in gross income in the computation of net income for the taxable periods involved.

(b) All of the dividends issued or paid by the subsidiaries to Lincoln is properly includible in gross income for the above stated purpose.

(c) For the fiscal year ended June 30, 1958, 42.47 per centum of the administrative fees paid by the subsidiaries to Lincoln is properly includible in gross income; and for the period ended March 16, 1959, 34.87 per centum is includible, for the above stated purpose.

(d) There should be deducted from gross income all expenses incurred by Lincoln in the conduct of its business, except those connected with, or related to that portion of the administrative fees not includible in Lincoln's gross income for the above stated purpose, that is to say, the portion of compensation for supervisory services performed without the District of Columbia.

Decision will be entered under Rule 30.

Jo. V. Morgan
Jo. V. Morgan
Judge

Served as follows:

Carl F. Bauersfeld, Esq.
Attorney for Petitioner
1921 Eye Street, N. W.
Washington, D. C. 20006 (mailed 1/19/65)

Finance Officer, D. C. (Mailed 1/19/65)

Corporation Counsel, D. C. (Mailed 1/19/65)
Phyllis R. Liberti,

Clerk

[Filed February 3, 1965]

Motion for Rehearing and Reconsideration

Comes now the petitioner, by its counsel, and pursuant to Rule 12(e) moves the Court to grant petitioner a rehearing in the above-entitled cause, and to reconsider and recall its Findings of Fact and Opinion filed January 19, 1965. The reasons for this motion are:

1. The determination of where a corporation is "commercially domiciled" is primarily a question of fact.
2. The question involving the commercial domicile status of petitioner's subsidiaries was not raised by the pleadings or presented at the trial or hearing of this case.
3. The commercial domicile issue was raised by the Court after the trial and hearing.
4. A rehearing should be granted to permit the petitioner to present evidence relative to the commercial domicile issue showing the exact operations of the subsidiaries, the records maintained by each subsidiary in its loan office, its local banking transactions, location of property rented, the State regulations of its business, the property owned by each subsidiary, the number of employees and their salaries, method of paying employees, the taxes paid by each, the number of directors and stockholders meetings, and control exercised by petitioner over the subsidiaries' operations.
5. Even upon the incomplete record now before the Court, petitioner submits that the Court's findings 3 (a) and (b) and its conclusions based thereon are clearly erroneous in holding that the petitioner's subsidiaries were "commercially domiciled" in the District of Columbia.

6. Court failed to determine and give consideration to which state gave the greatest protection and benefit to petitioner's subsidiaries in determining where they were commercially domiciled.

7. Petitioner is a holding company which derived income from dividends and interest and was not engaged in a trade or business in the District so as to be subject to tax on the dividends and interest.

8. Even assuming *arguendo* that the petitioner's subsidiaries are "commercially domiciled" in the District, the Court's holding that interest and dividends paid or issued by them were income from sources within the District is in error and conflicts with the provisions of Section 1, of Title X (§ 47-1580 D.C. Code 1951 ed.).

9. Even assuming *arguendo* that the petitioner's subsidiaries are "commercially domiciled" in the District, this is not their only domicile for tax purposes—the source of their dividend and interest paid is (a) where the active leading business is conducted and profits earned, or at least (b) both within and without the District so as to require apportionment.

WHEREFORE, we pray that this motion be granted.

Respectfully submitted,

/s/ CARL F. BAUERSFELD
Carl F. Bauersfeld
1921 Eye Street, N.W.
Washington 6, D. C.
Attorney for the Petitioner.

[Filed February 16, 1965]

Order

Upon consideration of the Motion for Rehearing and Reconsideration filed by the petitioner on February 3, 1965, it is by the Court this 16th day of February, 1965

ORDERED, That the aforesaid motion be and the same is hereby granted, subject to the limitation that the rehearing and reconsideration relate solely to the issue of commercial domicile of the subsidiaries of the petitioner; and that the rehearing be had at 10 A.M., March 8, 1965

AND IT IS FURTHER ORDERED, That the decision herein entered on January 19, 1965, be and the same is hereby vacated and set aside,

AND IT IS FURTHER ORDERED, That leave be and is hereby granted to the respondent to file not later than March 24, 1965, an amendment or substitution to a portion of its answer making specific allegations relating to the domicile of the subsidiaries of the petitioner.

Jo. V. MORGAN
Judge

Served as follows:

Carl F. Bauersfeld, Esq.
Attorney for Petitioner,
1921 Eye St., N.W.,
Washington, D. C. (Mailed 2/16/65)

Finance Officer, D. C. (Mailed 2/16/65)

Corporation Counsel, D. C. (Mailed 2/16/65)

Phyllis R. Liberti,
Clerk

[Filed February 16, 1965]

Memorandum

The petitioner has filed herein on February 3, 1965, the motion following:

> "Comes now the petitioner, by its counsel, and pursuant to Rule 12(e) moves the Court to grant petitioner a rehearing in the above-entitled cause, and to reconsider and recall its Findings of Fact and Opinion filed January 19, 1965."

The Court will grant the motion to the extent that the rehearing will be limited to the issue of commercial domicile of the subsidiaries of the petitioner. At the hearing both the petitioner and the respondent shall have the right to introduce evidence upon that issue.

The reasons for granting the motion to the extent indicated are the following:

The Court was of the opinion that the issue of the source of dividend and interest, involving the locale or domicile of the subsidiaries was sufficiently raised in the allegation in the respondent's answer following:

> "Respondent states that all of the petitioner's net income for the fiscal year ended June 30, 1958, and for the fiscal period July 1, 1958, through March 16, 1959, was from District of Columbia sources and as such is subject to District of Columbia Franchise Tax in accordance with the District of Columbia Income and Franchise Tax Act of 1947, as amended."

On further reflection, however, the Court does not believe that the allegation was specific enough, or at least, the petitioner could very well have not understood that it raised the issue of commercial domicile of the petitioner's subsidiaries.

Leave will be granted to the respondent to file an amendment or substitution of the above quoted paragraph of its

answer, being the second paragraph of Sec. B.2. of Part II of that answer, if it desires so to do.

An Order will be entered in conformity with this Memorandum.

Jo. V. MORGAN
Judge

[Filed March 24, 1965]

Amendment to Answer of District of Columbia

On January 19, 1965, the District of Columbia Tax Court handed down its Findings of Fact and Opinion in Docket No. 1937. The Tax Court concluded that the subsidiaries of State Loan and Finance Corporation were commercially domiciled in the District of Columbia. Thereafter, on February 3, 1965, petitioner filed a Motion for Rehearing and Reconsideration under Rule 12 (e) of this Court. By order dated February 16, 1965, this Court granted petitioner's motion, subject to the condition that the rehearing and reconsideration relate solely to the issue of the commercial domicile of the subsidiaries of the petitioner.

It was further ordered that respondent be granted leave to file an amendment or a substitution to a portion of its answer heretofore filed on July 6, 1964, for the specific purpose of making allegations relating to the domicile of the subsidiaries of the petitioner. Although respondent feels that its answer filed with this Court on July 6, 1964, raised the issue of the location of the commercial domicile of petitioner's subsidiaries, respondent, based upon the Court's memorandum filed February 16, 1965, amends paragraph numbered 2 of Section II of its answer, so as to add the following paragraph:

> "As a further alternative, respondent states that petitioner, and all of its subsidiaries, had ther com-

mercial domicile in the District of Columbia; that all of petitioner's net income for the fiscal year ended June 30, 1958, and for the fiscal period July 1, 1958, through March 16, 1959, including the income received by petitioner from its subsidiaries, was from District of Columbia sources, and that all of petitioner's income is subject in full to District of Columbia corporation franchise tax in accordance with the District of Columbia Income and Franchise Tax Act of 1947, as amended."

s/ CHESTER H. GRAY
Chester H. Gray
Corporation Counsel, D. C.

s/ HENRY E. WIXON
Henry E. Wixon
Assistant Corporation Counsel, D. C.

s/ ROBERT E. MCCALLY
Robert E. McCally
Assistant Corporation Counsel, D. C.

Attorneys for Respondent
District Building
Washington, D. C. 20004

[Filed February 2, 1966]

Supplemental Stipulation

It is hereby stipulated by and between the parties hereto that the following facts and exhibits may be considered a part of the record in this case as if introduced at the time of the re-hearing without objection.

1. Attached hereto is a schedule marked exhibit 5 entitled "Lincoln's Service Subsidiaries—Equity & Changes—7-1-57 to 6-30-58," which schedule shows names of subsidiary corporations, subscribed stock, paid in surplus,

total stock and paid in surplus, earned surplus as of 7-1-57, increase or (decrease) in earned surplus for fiscal year 1957-1958, less dividends paid, earned surplus as of 6-30-58, and equity as of 6-30-58.

2. Attached hereto is a schedule marked exhibit 6 entitled "Lincoln's Service Subsidiaries — Equity & Changes — 7-1-58 to 6-30-59," which schedule shows the names of the subsidiary corporations, the subscribed stock, paid in surplus, total subscribed stock and paid in surplus, earned surplus as of 7-1-58, increase or (decrease) in earned surplus for fiscal year 1958-1959, less dividends paid, earned surplus as of 6-30-59, and equity as of 6-30-59.

3. Attached hereto and marked exhibit 7 are copies of the special meeting of the Board of Directors held on September 4, 1958 at 11 o'clock of the following subsidiaries of the petitioner: Acme Loan Company, People's Finance Co., Inc., Globe Finance Co., Inc., People's Finance Co., Inc., of Pikeville, Lincoln Loan Service Inc., of Baltimore City, Old Dominion Small Loan Corporation of Newport News. These minutes are samples of the type of minutes kept by petitioner's subsidiaries when dividends were declared.

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Attorney for the Petitioner

s/ ROBERT C. McCALLY
Robert C. McCally
Assistant Corporation Counsel, D. C.
Attorney for the Respondent

Lincoln Service Subsidiaries
Equity & Changes
7-1-57 To 6-30-58

	Corporation	Stock	Paid In Surplus	Total		Earned Surplus 7-1-57
D.C.	Dealers Credit, Inc	1756-	54-	1810-		6381693
Fla	Globe Finance Co., Inc. (Daytona)	5000-	10000-	15000-		4209756
"	" " of Ft. Lauderdale	1000-	24000-	25000-		-0-
"	" " of Lake City	1000-	2000-	3000-		4854388
"	Lake Worth Finance Company	10000-	35000-	45000-		2996070
"	Globe Finance Co. Inc of Melbourne	1000-		1000-		3131032
"	" " of Palatka	1000-	2000-	3000-		5838055
"	" " of Smyrna	10000-	98680	1098680		3245358
"	" " of St. Augustine	1000-	2000-	3000-		(3776641)
"	People's Loan Service, Inc. (St. Pete)	1000-	9000-	10000-		(56904)
Ga	Fidelity Finance Co. Inc (Dublin)	1000-		1000-		508590
"	Nat'l Plan Loan Co. of Ga (Savannah)	100000-		100000-		(1168057)
Ky.	People's Finance Co. Inc. of Ashland	1000-		1000-		105267
"	" " of Danville	1000-		1000-		403177
"	" " (Catlettsburg)	5000-	10000-	15000-		4677641
"	" " of Corbin	1000-		1000-		844931
"	" " of Harlan	5000-	10000-	15000-		6884859
"	" " of Martin	100000-		100000-		2304793
"	" " of Paintsville	1000-		1000-		4585760
"	" " of Pikeville	5000-	10000-	15000-		5710691
"	Pikeville Finance Company	1000-		1000-		2084375
"	Peoples Finance Co Inc of Prestonsburg	100000-		100000-		820854
"	" " " of Russell	1000-		1000-		199795
La	" " " of Abbeville	1000-		1000-		3095936
"	Home Finance Co of Crowley, Inc.	24650	15360-	1560550		5865686
"	Peoples Finance Co. Inc of Eunice	1000-		1000-		948059
"	" " " of Franklin	1000-		1000-		2024056
"	" " " of Jennings	1000-		1000-		2218087
"	" " " of Mansfield	1000-		1000-		1339558
"	" " " of Minden	1000-		1000-		1332103
"	" " " of Natchitoches	1000-		1000-		1960666
Md	Lincoln Acceptance Co. Inc.	1000-		1000-		346734
"	Lincoln Loan Service, Inc of Balt. [illegible]	3000-		3000-		5817128
"	Arundel Finance Corp. (Annapolis)	25000-		25000-		1653424
"	Eastern Shore Finance Co. Inc. (Cambridge)	3000-		3000-		699957
"	" " " of Easton	1000-		1000-		1046956
"	" " " of Elkton	1000-		1000-		5797197
"	" " " of Havre de Grace	1000-	2000-	3000-		4671467
"	" " " of Pocomoke	1000-		1000-		2631116
"	" " " of Salisbury.	1000-		1000-		5494412
"	Lincoln Loan Service of Frederick	1000-		1000-		3906589
	~~" " " of Lexington Pk.~~	~~1000~~	~~24000-~~	~~25000-~~	Opened	1930155
"	" " " of Mount Rainier	1000-	4000-	5000-		(138953)
"	" " " of Silver Spring	3000-		3000-		2444725
"	" " " of Takoma Park	1050-	3950-	5000-		3829504
Ohio	Peoples Finance Co. Inc of Geneva	1000-		1000-		(175234)
"	" " " of Lockland	1000-		1000-		217487
Pa	Thrift Loan Corp. of Charleroi	2500-		2500-		4762489
"	Lincoln Loan Service Inc. of Aliquippa	1000-	2000-	3000-		(483709)
"	" " " of Ambridge	1000-	24000-	25000-		194135

INCREASE (DECREASE) DURING 57-58	LESS DIVIDENDS	EARNED SURPLUS 6-30-58		EQUITY 6-30-58 (3 + 8)				
1178643	— 0 —	7510336		7691336				
1178877	— 0 —	5395633		6895633				
(196327)	— 0 —	(196327)		2303673	ACQUIRED	8-6-57		
747375	— 0 —	5396763		5896763				
534276	— 0 —	3530346		8030346				
833546	— 0 —	3964578		4064578				
2094789	50000 —	2932844		3232844				
1217750	— 0 —	4462608		5561288				
1091396	— 0 —	(2685251)		(2385251)				
699872	— 0 —	642968		1642968				
(759705)	— 0 —	(251115)		(151115)				
(1749716)	— 0 —	(2692973)	12/30/57	7307027	12/30/57 -	CALENDAR YEAR 1957 -	CHANGED	1/1/58
(413241)	— 0 —	(313974)		(213974)				
749706	— 0 —	649083		749083				
1733361	— 0 —	5401002		6901002				
5910777	— 0 —	14359753		15359753				
1786840	30000 —	5671699		7171699				
1563852	— 0 —	3868645		13868645				
2775078	— 0 —	6810838		6910838				
2085192	25000 —	5295888		6795888				
1750577	— 0 —	2809432		2909432				
1753950	— 0 —	2574804		12574804				
(73777)	— 0 —	192418		292418				
1243729	— 0 —	4339165		4439165				
1804505	— 0 —	7670191		9230741				
185566	— 0 —	1133625		1233625				
1050862	— 0 —	2529918		2629918				
1851344	— 0 —	2758431		2858431				
(569218)	— 0 —	770340		870340				
(1725896)	— 0 —	1106207		1206207				
802474	— 0 —	2763140		2863140				
1391785	— 0 —	1368019		1368019				
1576540	27000 —	5693668		5993668				
1479085	— 0 —	2079509		4579509				
1038729	30000 —	6038629		6338629				
431923	— 0 —	1478879		1578879				
1897587	45000 —	3194784		3294784				
1875981	— 0 —	6497448		6797448				
1307735	— 0 —	3938851		4038851				
1566372	40000 —	3060814		3160814				
1057617	— 0 —	4959197		5059197				
(480812)	— 0 —	(619765)		(119765)				
730166	— 0 —	3174891		3474891				
(600627)	— 0 —	3819442		4319442				
(814923)	— 0 —	(990157)		(890157)				
1632351	— 0 —	380738		480738				
1876464	37500 —	2338953		2588953				
967780	— 0 —	479071		779071				
795576	— 0 —	489701		2989701				

	Corporation	Stock	Paid In Surplus	Total		Earned Surplus 7-1-57
Pa.	Lincoln Loan Service, Inc of Bloomsburg	1000-	24000-	25000-		87183
"	" " " of Carlisle	1000-	24000-	25000-		332571
"	" " " of Chambersburg	1000-		1000-		2818457
"	" " " of Clearfield	1000-		1000-		(1668610)
"	" " " of Columbia	1000-		1000-		(175389)
"	" " " of Danville	1000-	24000-	25000-		279116
"	" " " of Downingtown	1000-	24000-	25000-		(4150)
"	" " " of DuBois	1000-	24000-	25000-		19206
"	" " " of Ellwood City	1000-	24000-	25000-		-0-
"	" " " of Erie	1000-	9000-	10000-		4934567
"	" " " of Franklin	1000-		1000-		901195
"	" " " of Harrisburg	2000-		2000-		5366970
"	" " " of Pa (Johnstown)	1800-		1800-		3140656
"	" " " of Kittanning	100000-		100000-	1/1/58 →	734237
"	" " " of Meadville	1000-	24000-	25000-		-0-
"	" " " of Mount Carmel	2000-		2000-		4249575
"	" " " of Pittsburgh	25000-		25000-		5405602
"	" " " of Punxsutawney	1000-	24000-	25000-		-0-
"	" " " of Shamokin	1000-	2000-	3000-		5930758
"	" " " of Shippensburg	1000-	2000-	3000-		5962251
"	" " " of Waynesboro	1000-		1000-		6302471
"	" " " of Williamsport	1000-	24000-	25000-		278119
"	" " " of York	5000-	20000-	25000-		6633239
So Car.	Fidelity Loan Co. Inc of Abbeville	1000-	9000-	10000-		-0-
"	" " " of Clinton	1000-	9000-	10000-		-0-
"	" " " (Conway)	1000-	9000-	10000-		-0-
"	E. & J. Finance Corp. (Hartsville)	1000-		1000-		1039747
Texas	Universal Management Corp.	1000-	24000-	25000-		9509670
"	Peoples Finance Co Inc of Austin	1000-		1000-		5308176
"	" " " of Travis (Austin)	50000-		50000-		-0-
"	" " " " (Dallas)	50000-		50000-		-0-
"	" " " of Greenville	1000-		1000-		321162
"	" " of Hunt (Greenville)	50000-		50000-		-0-
"	" " " Harris (Houston)	50000-		50000-		-0-
"	" " " of Paris	1000-		1000-		(624857)
"	" " " of Lamar (Paris)	50000-		50000-		-0-
"	" " " of Bexar (San Antonio)	50000-		50000-		-0-
"	" " " of McLennan (Waco)	50000-		50000-		-0-
"	Peoples Finance Co Inc of Texas (Dallas)	1000-	9000-	10000-		43296
"	" " " of Houston	1000-	1000-	2000-		1134958
"	" " " of San Antonio	1000-	4000-	5000-		1549107
"	" " " of Waco	1000-	4000-	5000-		187387
Va.	Old Dominion Inv. Loan Corp. (Alexandria)	10000-		10000-		(1065792)
"	" " " of Buena Vista	2000-		2000-		86010
"	" " " of Christiansburg	2000-		2000-		513947
"	" " " of Front Royal	2000-		2000-		(198450)
"	" " " of Galax	2000-		2000-		536714
"	" " " of Marion	2000-		2000-		522854
"	" " " of Va (Martinsville)	50000-	8500-	58500-		(109637)
"	" " " of Newport News	2500-		2500-		810995

Exhibit 5

Page 2

(Increase) (Decrease) Final 57-58	Less Dividends	Earned Surplus 6-30-58	Equity 6-30-58 (3+8)			
179680	-0-	2767063	2767063			
467908	-0-	800479	3300479			
1217497	-0-	4035954	4135954			
679703	-0-	(988907)	(888907)			
739503	-0-	(914897)	(814897)			
733780	-0-	512396	3012396			
290306	-0-	2861756	2786156			
424165	-0-	503371	3003371			
-0-	-0-	-0-	25000	Acquired	8-14-57	
1439374	20000	4373941	5373941			
645017	-0-	1546212	1646212			
2011455	25000	4878425	5078425			
1828413	-0-	4969069	5149069			
206552	-0-	940789	10940789	Acquired	10/15/57 - Short Period 1/1/58 - 6/30/58	
-0-	-0-	-0-	25000	Acquired	8-19-57	
8706210	-0-	5170195	5370195			
1814642	25000	4720744	7220744			
-0-	-0-	-0-	25000	Acquired	10/15/57	
1011114	25000	4444872	4744872			
1086809	25000	4546060	4846060			
1984806	50000	3292277	3392277			
422644	-0-	700763	3200763			
1640825	50000	3274064	5774064			
250731	-0-	(250731)	749269			
311406	-0-	311406	1311406			
324963	-0-	324963	1324963			
394174	-0-	1433921	1533921			
2664320	45000	7013990	9513990			
627426	40000	1935602	2035602			
1013224	-0-	1013224	5101324	Acquired	5/1/58	
140396	-0-	140396	5140396	"	"	
819366	-0-	1140528	1240528			
96344	-0-	96344	5096344	"	"	
1380181	-0-	1384481	5138481	"	"	
402519	-0-	(277333)	(177333)			
49485	-0-	49485	5049485	"	"	
1501144	-0-	1501144	5150144	"	"	
1436500	-0-	1436500	5143650	"	"	
76891	-0-	(33593)	966407			
625117	-0-	1760075	1960075			
1312722	-0-	2861829	3361829			
1145929	-0-	3019750	3519750			
707018	-0-	(177810)	(77810)			
437323	-0-	(337713)	(137713)			
1118312	-0-	961256	1161256			
201193	-0-	2743	202743			
667530	-0-	1204244	1404244			
1397995	-0-	1162649	1362649			
1116671	-0-	~~5000~~ (6813.66)	5168634			
1912147	37500	627221	652721			

	CORPORATION.	STOCK	PAID IN SURPLUS	TOTAL		EARNED SURPLUS 7-1-57
VA.	[illegible] Loan Corp. of Petersburg	2000 –		2000 –		726508
"	" " " of Portsmouth	2500 –		2500 –		3535234
"	" " " of Pulaski	1000 –		1000 –		3909037
"	" " " of Richmond	2500 –		2500 –		1334352
W. Va.	Acme Loan Co. (Beckley)	25000 –		25000 –		8282979
"	" " " of Lewisburg	1000 –		1000 –		1506945
"	" " " of Madison	30000 –		30000 –		2237656
"	" " " of Man	1000 –	4000 –	5000 –		6262867
"	" " " of Pineville	20000 –		20000 –		13153022
"	" " " of Whitesville	5000 –		5000 –		7622577
"	Charles Town Finance Co. Inc.	1000 –		1000 –		4888914
"	Financial Service Co. (Elkins)	15000 –		15000 –		11842722
"	Martinsburg Loan Corp.	3000 –		3000 –		711578
"	Moundsville Loan Company.	5000 –		5000 –		6472923
"	West Va. Finance Corp (Moundsville)	3000 –		3000 –		3135652
"	" " " of Wellsburg	1000 –		1000 –		2466576

Exhibit 5

Page 3

(Increase) Decrease	Less Dividends	Earned Surplus 6-30-58	Equity 6-30-58 (3+8)
Issue 6-30-58			
1/1/58	-0-	767766	967766
191634	-0-	5451576	5701576
697818	-0-	5885886	5985886
(108460)	-0-	1771589	1471589
2786559	40000 -	7143538	9443538
1109658	-0-	2656653	2756653
1787573	-0-	9015229	1701577
1857381	-0-	8170248	8670248
2569918	-0-	1577940	1777940
1698179	37500 -	5570756	6270756
1115999	-0-	6004813	6104813
2362106	-0-	1170488	1570488
2367171	33000 -	6178849	6478849
1201313	-0-	7674236	8174236
1534242	-0-	4669894	4969894
810967	-0-	3277543	3377543

LINCOLN SERVICE SUBSIDIARIES
EQUITY & CHANGES
7-1-58 TO 6-30-59

	CORPORATION			STOCK	PAID IN SURPLUS	TOTAL
D.C.	Dealer's Credit, Inc.			1786 -	54 -	1840 -
FLA.	Globe Finance Company, Inc.	(Daytona)		5000 -	10000 -	15000 -
	" " " "	of Ft. Lauderdale		1000 -	24000 -	25000 -
	" " " "	of Lake City		1000 -	2000 -	3000 -
	" " " "	of Melbourne		1000 -		1000 -
	" " " "	of Palatka		1000 -	2000 -	3000 -
	" " " "	of Sarasota		10000 -	986.80	10986.80
	" " " "	of St. Augustine		1000 -	2000 -	3000 -
	Lake Worth Finance Company			10000 -	35000 -	45000 -
	People's Loan Service, Inc.	(St. Petersburg)		1000 -	9000 -	10000 -
GA.	Fidelity Finance Company, Inc.	(Dublin)		1000 -		1000 -
	National Silver Loan Company of Ga.	(Savannah)		100000 -		100000 -
KY.	Pikeville Finance Company			1000 -		1000 -
	People's Finance Company, Inc.	of Ashland		1000 -		1000 -
	" " " "	of Danville		1000 -		1000 -
	" " " "	(Catlettsburg)		5000 -	10000 -	15000 -
	" " " "	of Corbin		1000 -		1000 -
	" " " "	of Harlan		5000 -	10000 -	15000 -
	" " " "	of Martin		100000 -		100000 -
	" " " "	of Paintsville		1000 -		1000 -
	" " " "	of Pikeville		5000 -	10000 -	15000 -
	" " " "	of Prestonsburg		100000 -		100000 -
	" " " "	of Russell		1000 -		1000 -
LA	" " " "	of Abbeville		1000 -		1000 -
	" " " "	of Eunice		1000 -		1000 -
	" " " "	of Franklin		1000 -		1000 -
	" " " "	of Jennings		1000 -		1000 -
	" " " "	of Mansfield		1000 -		1000 -
	" " " "	of Minden		1000 -		1000 -
	" " " "	of Natchitoches		1000 -		1000 -
	Home Finance Company of Crowley,	Inc.		245.50	15360 -	15605.50
MD.	Lincoln Consumer Finance Company,	Inc.		1000 -		1000 -
	General Finance Corporation	(Annapolis)		25000 -		25000 -
	Eastern Shore Finance Company, Inc.	(Cambridge)		3000 -		3000 -
	" " " " "	of Easton		1000 -		1000 -
	" " " " "	of Elkton		1000 -		1000 -
	" " " " "	of Havre de Grace		1000 -	2000 -	3000 -
	" " " " "	of Pocomoke		1000 -		1000 -
	" " " " "	of Salisbury		1000 -		1000 -
	Lincoln Loan Service, Inc. of	Baltimore City (Annapolis)		3000 -		3000 -
	" " " "	of Frederick		1000 -		1000 -
	" " " "	of Lexington Park		1000 -	24000 -	25000 -
	" " " "	of Mount Rainier		1000 -	4000 -	5000 -
	" " " "	of Silver Spring		3000 -		3000 -
	" " " "	of Takoma Park		1050 -	3950 -	5000 -
Ohio	People's Finance Company, Inc. of	Seneca		1000 -		1000 -
	" " " "	of Richland		1000 -		1000 -
[illegible]	Thrift Loan Corporation of Charleston			2500 -		2500 -
	Lincoln Loan Service, Inc. of	[illegible]		1000 -	2000 -	3000 -
	" " " "	of Woodbridge		1000 -	24000 -	25000 -

Exhibit 6

Page 1

...RNED ...RPLUS ...	INCREASE (DECREASE) [illegible]	LESS DIVIDENDS	EARNED SURPLUS 6-30-59		EQUITY 6-30-59 (519)		
[illegible]	(426213)	56142 -	1464924		1645924		
[illegible]	1449[illegible]	35000 -	3195465		4695465		
(195327)	(264228)		(460555)		2039445		
[illegible]	746550	35000 -	2843313		3143313		
[illegible]	1003926		4968506		5068506		
[illegible]	1680941		4613085		4913085		
[illegible]	1134643		5591657		1695331		
(2685251)	817669		(1869442)		(1569442)		
3530346	903904		1143250		8934250		
[illegible]	715631		714531		1714531		
(251115)	326578		275463		375463		
(3855592)	(173620)		(4029212)		5970788		
[illegible]	491136		3800618		3900618		
(313974)	796		(313178)		(213178)		
[illegible]	400016		1049093		1149093		
[illegible]	1201955	35000 -	3102957		4602957		
1435913	591316		2022269		2122269		
3671649	1384004	35000 -	3560703		5060703		
[illegible]	1939714		5808359		15808359		
[illegible]	235681		9166519		9266519		
[illegible]	1522384	35000 -	3318275		4218275		
2574804	1664057		4238862		14238862		
192412	(26348)		166070		266070		
[illegible]	114516		5830681		5930681		
[illegible]	41427		1602652		1702652		
[illegible]	1041786		3570704		3670704		
2750431	1254030		4012461		4112461		
770340	493909		1264249		1364249		
1106207	909328		196879		296879		
[illegible]	994550		3756699		3856699		
7670191	1336202		9006393		10566943		
[illegible]	236614		2021633		2121633		
[illegible]	413005		2527514		5027514		
[illegible]	1522593	42000 -	3361222		3661222		
[illegible]	556712		2029661		2129661		
[illegible]	2060701		5255485		5355485		
[illegible]	1346136	45000 -	3343584		3643584		
[illegible]	713319		4722170		4822170		
[illegible]	1316677		4621441		4721441		
[illegible]	2321130	26000 -	4470304		4720304		
[illegible]	1249315		6223512		6323512		
- , -	(461398)	To 12/30/56	(461398)	← 12/30/58 →	2038602	Acquired	10/22/58
(619765)	518420		(101345)		398655		
[illegible]	1182341		5057232		5357232		
[illegible]	142475		4666917		5166917		
(990157)	168163		(821994)		(721994)		
[illegible]	159450		520188		620188		
[illegible]	1396010		3734963		3984963		
[illegible]	345250		1422321		1722321		
[illegible]	322471		868172		3368172		

	Corporation	Stock	Paid in Surplus	Total	
Pa.	Lincoln Loan Service, Inc. of Bloomsburg	1000 -	24000 -	25000 -	
	" " " " of Carlisle	1000 -	24000 -	25000 -	
	" " " " of Chambersburg	1000 -		1000 -	
	" " " " of Clearfield	1000 -		1000 -	
	" " " " of Columbia	1000 -		1000 -	
	" " " " of Danville	1000 -	24000 -	25000 -	
	" " " " of Downingtown	1000 -	24000 -	25000 -	
	" " " " of Du Bois	1000 -	24000 -	25000 -	
	" " " " of Ellwood City	1000 -	24000 -	25000 -	
	" " " " of Erie	1000 -	9000 -	10000 -	
	" " " " of Franklin	1000 -		1000 -	
	" " " " of Harrisburg	2000 -		2000 -	
	" " " " of Pennsylvania (Johnstown)	1800 -		1800 -	
	" " " " of Kittanning	100000 -		100000 -	
	" " " " of Meadville	1000 -	24000 -	25000 -	
	" " " " of Mount Vernon	2000 -		2000 -	
	" " " " of Pittsburgh	25000 -		25000 -	
	" " " " of Punxsutawney	1000 -	24000 -	25000 -	
	" " " " of Shamokin	1000 -	2000 -	3000 -	
	" " " " of Shippensburg	1000 -	2000 -	3000 -	
	" " " " of Waynesboro	1000 -		1000 -	
	" " " " of Williamsport	1000 -	24000 -	25000 -	
	" " " " of York	5000 -	20000 -	25000 -	
	Cooperative Loan & Investment Company (Harrisburg)	100000 -		100000 -	*
	Local Sales Finance Company (")	200000 -		200000 -	*
	Harrisburg Public Consumer Discount Company	200000 -		200000 -	*
So. Car.	Fidelity Loan Company, Inc. of Abbeville	1000 -	9000 -	10000 -	
	" " " " of Clinton	1000 -	9000 -	10000 -	
	" " " " (Conway)	1000 -	9000 -	10000 -	
	E & J Finance Corporation (Hartsville)	1000 -		1000 -	
Texas	Commercial Management Corporation	1000 -	24000 -	25000 -	
	Peoples Finance Company, Inc. of Austin	1000 -		1000 -	
	" " " " of Travis (Austin)	50000 -		50000 -	
	" " " " (Dallas)	50000 -		50000 -	
	" " " " of Greenville	1000 -		1000 -	
	" " " " of Hunt (Greenville)	50000 -		50000 -	
	" " " " of Harris (Houston)	50000 -		50000 -	
	" " " " of Paris	1000 -		1000 -	
	" " " " of Lamar (Paris)	50000 -		50000 -	
	" " " " of Bexar (San Antonio)	50000 -		50000 -	
	" " " " of McLennan (Waco)	50000 -		50000 -	
	" " " " of Texas (Dallas)	1000 -	9000 -	10000 -	
	" " " " of Houston	1000 -	1000 -	2000 -	
	" " " " of San Antonio	1000 -	4000 -	5000 -	
	" " " " of Waco	1000 -	4000 -	5000 -	
Va.	Old Dominion Small Loan Corp. (Alexandria)	10000 -		10000 -	
	" " " " of Buena Vista	2000 -		2000 -	
	" " " " of Harrisonburg	2000 -		2000 -	
	" " " " of Front Royal	2000 -		2000 -	
	" " " " of Galax	2000 -		2000 -	

Earned Surplus 1-1-59	Increase (Decrease) Earnings	Less Dividends	Earned Surplus 6-30-59	Equity 6-30-59 (-14)			
[illegible]	[illegible]		[illegible]	[illegible]			
[illegible]	[illegible]		[illegible]	[illegible]			
[illegible]	[illegible]		[illegible]	[illegible]			
(988907)	[illegible]		(283717)	(183717)			
(914897)	[illegible]		(449999)	(349999)			
[illegible]	[illegible]		[illegible]	[illegible]			
[illegible]	[illegible]		[illegible]	[illegible]			
[illegible]	[illegible]		[illegible]	[illegible]			
[illegible]	(639604)		(639604)	[illegible]			
[illegible]	[illegible]		[illegible]	[illegible]			
[illegible]	[illegible]		[illegible]	[illegible]			
[illegible]	[illegible]		[illegible]	[illegible]			
[illegible]	[illegible]		[illegible]	[illegible]			
[illegible]	[illegible]		[illegible]	[illegible]			
[illegible]	[illegible]		[illegible]	[illegible]			
- o -	(984084)		(984084)	[illegible]			
[illegible]	[illegible]	32000 -	[illegible]	[illegible]			
[illegible]	[illegible]		[illegible]	[illegible]			
- o -	(469661)		(469661)	[illegible]			
[illegible]	[illegible]		[illegible]	[illegible]			
[illegible]	[illegible]		[illegible]	[illegible]			
[illegible]	[illegible]		[illegible]	[illegible]			
[illegible]	[illegible]		[illegible]	[illegible]			
[illegible]	[illegible]		[illegible]	[illegible]			
[illegible]	[illegible]	12000 -	[illegible]	[illegible]	Acquired	[illegible]	
[illegible]	(1859824)		(169218)	[illegible]	Surplus	[illegible]	
[illegible]	(80699)	6000 -	(98155)	[illegible]	Income	Amendment	1957
(250731)	[illegible]		(235261)	[illegible]			
[illegible]	[illegible]		[illegible]	[illegible]			
[illegible]	[illegible]		[illegible]	[illegible]			
[illegible]	[illegible]		[illegible]	[illegible]			
[illegible]	[illegible]	500000 -	[illegible]	[illegible]			
[illegible]	(950393)		[illegible]	[illegible]			
[illegible]	[illegible]		[illegible]	[illegible]			
[illegible]	(76989)		(36593)	[illegible]			
[illegible]	(4709-)		[illegible]	[illegible]			
[illegible]	[illegible]		[illegible]	[illegible]			
[illegible]	[illegible]		[illegible]	[illegible]			
[illegible]	[illegible]		[illegible]	[illegible]			
(277333)	[illegible]		(177767)	(177767)			
[illegible]	(44891)		[illegible]	[illegible]			
[illegible]	[illegible]		[illegible]	[illegible]			
[illegible]	[illegible]		[illegible]	[illegible]			
[illegible]	[illegible]		[illegible]	[illegible]			
(32593)	(1077347)		(165404)	(65404)	Combined by I.R.S. Spin-off Disallowed		
[illegible]	Included Above				"		
[illegible]	[illegible]				"		
(177810)	[illegible]		(129856)	(299856)			
(337713)	[illegible]		[illegible]	[illegible]			
[illegible]	[illegible]		[illegible]	[illegible]			
[illegible]	[illegible]		[illegible]	[illegible]			
[illegible]	[illegible]		[illegible]	[illegible]			

	Corporation			Stock	Par. Surplus	Total
	Wilkesbarre Coal Co.	of Pittston		7000-	8500-	7000-
	" " " "	of Wm. (Wyoming)		50000-		58500-
	" " " "	of Newport Mines		2500-		2500-
	" " " "	of Plymouth		7000-		7000-
	" " " "	of Pittston		750-		750-
	" " " "	of Parsons		1000-		1000-
	" " " "	of Exeter		2500-		2500-
	Pittston Coal Company	(Pittston)		25000-		25000-
	" " "	of Duryea		1000-		1000-
	" " "	of Carbondale		3000-		3000-
	" " "	of Avoca		1000-	4000-	5000-
	" " "	of Pittston		70000-		70000-
	" " "	of Wilkesville		5000-		5000-
	Lehigh Coal & Navigation Co.			1000-		1000-
	Pennsylvania Coal Company	(Avoca)		15000-		15000-
	Delaware & Hudson Canal Co.			3000-		3000-
	Honesdale Coal Company			5000-		5000-
	West Virginia Pulp & Paper Co.	(Monongahela)		3000-		3000-
	" " " "	of Williamsburg		1000-		1000-

Exhibit 6

Page 3

Earned Surplus 6-30-88	Increase (Decrease) from 88-89	Less Dividends	Earned Surplus 6-30-89		Equity 6-30-89 (5+9)			
[illegible]	[illegible]		1903574		2103574			
(681366)	81264		131277		598127			
6[illegible]	[illegible]	47500 -	4079962		4329962			
7677.[illegible]	[illegible]		1037760		1237760			
54[illegible]	[illegible]	35000 -	396732		421732			
3[illegible]	[illegible]	37000 -	4395899		4495899			
[illegible]	(30840)		1195052		1445052			
[illegible]	[illegible]	50000 -	4291571		6291571			
[illegible]	[illegible]		[illegible]		[illegible]			
[illegible]	[illegible]		1079626		1379626			
61[illegible]	[illegible]		947817		947817			
15[illegible]	[illegible]	60000 -	1174217		1374217			
58[illegible]	[illegible]	35000 -	3629775		4129775			
6[illegible]	[illegible]		751160		761160			
1[illegible]	[illegible]		1657749		1761749			
6[illegible]	[illegible]	47000 -	4140264		4440264			
8[illegible]	[illegible]		886106		936106			
[illegible]	[illegible]		6148827		6498827			
37[illegible]	[illegible]		4122727		4272727			

Exhibit 7

SPECIAL MEETING BOARD OF DIRECTORS

OF

ACME LOAN COMPANY

HELD

SEPTEMBER 4, 1958 AT 11:00 O'CLOCK

A Special Meeting of the Board of Directors of the Corporation was held in the offices of the Company, pursuant to written notice of the time, place and purpose of the meeting.

Those present and constituting a quorum were:

Charles Delmar
Ralph G. Blasey
Thornton Burnet
Oscar C. Mitchell

Charles Delmar acted as Chairman of the meeting and Thornton W. Burnet acted as Secretary of the meeting.

The minutes of the following meetings of the Board of Directors were then read and unanimously accepted and approved:

December 2, 1957 TWB

The Chairman announced that the Treasurer's Report showed a surplus as at July 31, 1958 of $71,435.38 and that the proposed dividend of $200.00 per share would require $50,000.00, leaving a surplus of $21,435.38.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED, That, a dividend of $200.00 per share be paid on the Common Stock of the Corporation to stockholders of record September 4, 1958 payable September 10, 1958.

There being no further business, upon motion duly made and seconded, the meeting adjourned.

THORNTON W. BURNET
Secretary of the Meeting

JCG:j

SPECIAL MEETING BOARD OF DIRECTORS

OF

PEOPLES FINANCE CO., INC.

HELD

SEPTEMBER 4, 1958 AT 11:00 O'CLOCK

A Special Meeting of the Board of Directors of the Corporation was held in the offices of the Company, pursuant to written notice of the time, place and purpose of the meeting.

Those present and constituting a quorum were:

Charles Delmar
Ralph G. Blasey
Thornton W. Burnet
Raymond E. Murphy

Charles Delmar acted as Chairman of the meeting and Thornton W. Burnet acted as Secretary of the meeting.

The minutes of the following meetings of the Board of Directors were then read and unanimously accepted and approved:

March 19, 1958

The Chairman announced that the Treasurer's Report showed a surplus as at July 31, 1958 of $54,010.02 and that the proposed dividend of $7.00 per share would require $35,000.00, leaving a surplus of $19,010.02.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED, That, a dividend of $7.00 per share be paid on the Common Stock of the Corporation to stockholders of record September 4, 1958 payable September 10, 1958.

There being no further business, upon motion duly made and seconded, the meeting adjourned.

THORNTON W. BURNET
Secretary of the Meeting

JCG:j

SPECIAL MEETING BOARD OF DIRECTORS
OF
GLOBE FINANCE CO., INC.
HELD
SEPTEMBER 4, 1958 AT 11:00 O'CLOCK

A Special Meeting of the Board of Directors of the Corporation was held in the offices of the Company, pursuant to written notice of the time, place and purpose of the meeting.

Those present and constituting a quorum were:

Charles Delmar
Thornton W. Burnet
Oscar C. Mitchell
Frank B. Severance

Charles Delmar acted as Chairman of the meeting and Thornton W. Burnet acted as Secretary of the meeting.

The minutes of the following meetings of the Board of Directors were then read and unanimously accepted and approved:

March 19, 1958

The Chairman announced that the Treasurer's Report showed a surplus as at July 31, 1958 of $53,956.33 and that the proposed dividend of $7.00 per share would require $35,000.00, leaving a surplus of $18,956.33.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED, That, a dividend of $7.00 per share be paid on the Common Stock of the Corporation to stockholders of record September 4, 1958 payable September 10, 1958.

There being no further business, upon motion duly made and seconded, the meeting adjourned.

THORNTON W. BURNET
Secretary of the Meeting

JCG:j

SPECIAL MEETING BOARD OF DIRECTORS

OF

PEOPLES FINANCE CO., INC. OF PIKEVILLE

HELD

SEPTEMBER 4, 1958 AT 11:00 O'CLOCK

A Special Meeting of the Board of Directors of the Corporation was held in the offices of the Company, pursuant to written notice of the time, place and purpose of the meeting.

Those present and constituting a quorum were:

Charles Delmar
Ralph G. Blasey
Thornton W. Burnet
Raymond E. Murphy

Charles Delmar acted as Chairman of the meeting and Thornton W. Burnet acted as Secretary of the meeting.

The minutes of the following meetings of the Board of Directors were then read and unanimously accepted and approved:

March 19, 1958

The Chairman announced that the Treasurer's Report showed a surplus as at September 4, 1958 of $52,958.88 and that the proposed dividend of $7.00 per share would require $35,000.00, leaving a surplus of $17,958.88.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED, That, a dividend of $7.00 per share be paid on the Common Stock of the Corporation to stockholders of record September 4, 1958 payable September 10, 1958.

There being no further business, upon motion duly made and seconded, the meeting adjourned.

THORNTON W. BURNET
Secretary of the Meeting

JCG:j

SPECIAL MEETING BOARD OF DIRECTORS

OF

LINCOLN LOAN SERVICE, INC. OF BALTIMORE CITY

HELD

SEPTEMBER 4, 1958 AT 11:00 O'CLOCK

A Special Meeting of the Board of Directors of the Corporation was held in the offices of the Company, pursuant to written notice of the time, place and purpose of the meeting.

Those present and constituting a quorum were:

John F. Davies
Charles Delmar
Oscar C. Mitchell
Frank B. Severance

Charles Delmar acted as Chairman of the meeting and Thornton W. Burnet acted as Secretary of the meeting.

The minutes of the following meetings of the Board of Directors were then read and unanimously accepted and approved:

March 5, 1958

The Chairman announced that the Treasurer's Report showed a surplus as at July 31, 1958 of $56,936.68 and that the proposed dividend of $12. per share would require $36,000.00, leaving a surplus of $20,936.68.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED, That, a dividend of $12. per share be paid on the Common Stock of the Corporation to stockholders of record September 4, 1958 payable September 10, 1958.

There being no further business, upon motion duly made and seconded, the meeting adjourned.

THORNTON W. BURNET
Secretary of the Meeting

JCG:j

SPECIAL MEETING BOARD OF DIRECTORS

OF

OLD DOMINION SMALL LOAN CORPORATION OF NEWPORT NEWS

HELD

SEPTEMBER 4, 1958 AT 11:00 O'CLOCK

A Special Meeting of the Board of Directors of the Corporation was held in the offices of the Company, pursuant to written notice of the time, place and purpose of the meeting.

Those present and constituting a quorum were:

Charles Delmar
Thornton W. Burnet
Frank B. Severance

Charles Delmar acted as Chairman of the meeting and Thornton W. Burnet acted as Secretary of the meeting.

The minutes of the following meetings of the Board of Directors were then read and unanimously accepted and approved:

March 19, 1958

The Chairman announced that the Treasurer's Report showed a surplus as at July 31, 1958 of $62,721.00 and that the proposed dividend of $17.00 per share would require $42,500.00, leaving a surplus of $20,221.00.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED, That, a dividend of $17.00 per share be paid on the Common Stock of the Corporation to stockholders of record September 4, 1958 payable September 10, 1958.

There being no further business, upon motion duly made and seconded, the meeting adjourned.

THORNTON W. BURNET
Secretary of the Meeting

JCG:j

[Filed March 7, 1966]

Opinion No. 1041(A)

Findings of Fact and Opinion on Rehearings

The rehearing granted in this case was limited to the question whether the subsidiaries of Lincoln Service Corporation (hereinafter called "Lincoln") were commercially domiciled in the District of Columbia.

FINDINGS OF FACT

By a stipulation filed herein on February 2, 1966, the parties have stipulated some of the facts, and as stipulated are found by the Court. The Court makes the additional findings of fact on rehearing as follows:

9. The subsidiaries were licensed in the states in which they had their lending offices, and were subject to the laws and regulations of those states relating to the maximum amount of the loan, the rate of interest charged and the place of business. The law and regulations of those states required the keeping of the loan records at the local office so that the examiners for the states could make their examinations to determine if the laws and regulations were being obeyed.

10. (a) The procedure for the lending of money by the subsidiaries was generally the following: the applicant for the loan came to the office of the subsidiary and was interviewed by the manager or cashier and an application for credit was taken which was considered by that official together with credit information. If the manager or the cashier decided that the loan should be made the note was signed by the applicant and if a security was involved chattel mortgages or similar documents would be signed and the money paid to the applicant of the loan. The manager had the sole discretion as to respect to the loan subject to the state laws. The manager would determine the amount of the loan, the terms of repayment and the length of the

loan. The interest rate was always the maximum allowed by the law of the state in which the particular office was located.

(b) In addition to the note there was used or executed the documents following: a passbook in which the record of the payments were made, chattel mortgage if that was involved, application for credit and supporting credit documents. With the exception of the passbook which was given to the borrower the papers were kept in the local office as required by the law of the state in which the office was located. There was also prepared for the record of the office a ledger card which showed the name and address of the borrower, where he worked, the terms of the loan, the record of his payments and, on the reverse side, a record of collections.

(c) The books and general ledger of all the subsidiaries were kept and maintained in the office of the Lincoln Service Corporation in the Woodward Building, Washington, D. C.

11. No record of an individual borrower was kept in the office of Lincoln. But each day there was sent to Lincoln as the manager of the subsidiaries an accounting report containing sections. Section 1 showed the loans that were made that day and the name, address and terms of the loan and the amount of money that had been loaned. Section 2 showed the interest income, the principal income, any income that might be received from a P.&L. or account that had been charged. Section 3 showed the expenses of the particular office, all the money that had been paid out, the total amount of loans, the salaries, rent and all expenses that had been paid that day. In addition it showed the opening cash and closing cash, the amount of money in the local bank and how much money was on hand.

12. Each subsidiary sent to the office of Lincoln a daily accounting report which contained the record of the loans made that day, the collections made, any other income that

was received and a record of expenses that were paid. In addition there would generally be other statistical information such as the loan balance and the status of the loans.

13. All accounting services of the subsidiaries was conducted by Lincoln on the subsidiaries' behalf in the District of Columbia which involved all tax accounting, the filing of tax returns and other returns that were made by the subsidiaries, the record of dividends and all other necessary accounting services.

14. Separate bank accounts of each of the subsidiaries were maintained in the city in which the offices were located respectively. The manager and cashier of the particular office and the treasurer of the subsidiary in the District of Columbia had authority to draw on the separate bank accounts. The subsidiaries had a joint bank account in the District of Columbia in the name of their two agents.

15. The managers and officers of the subsidiaries had and exercised the authority to employ and discharge employees.

16. The supervision services performed by Lincoln for the subsidiaries for which it charged the subsidiaries the administrative fees ($290,407.79 for the year ended June 30, 1958, and $229,137.54 for the period ended March 16, 1959), in addition to the bookkeeping and accounting services consisted of the management and supervision of the subsidiaries on their behalf respectively by the reviewing of the reports, accounting reports and other information which it would daily receive from the subsidiaries. Such management in addition included the arrangements for advertising and centralized purchasing for all the subsidiaries.

17. If it was felt that an office was not operating properly a supervisor employed by Lincoln was sent to correct the situation or procedure. The corrective measures, if necessary, would result in either the discharge of personnel or the discontinuance of the office.

18. The expenses of the subsidiaries for rent, electricity and the like were paid by check drawn by the manager on the bank account in the location of the particular office.

19. The stockholders' meetings of the subsidiaries were held in the District of Columbia each year.

20. The Directors' meeting of the subsidiaries was held in the District of Columbia generally once a year.

21. The managers of the subsidiaries were sent a manual concerning the procedure to be followed by the officers of the subsidiaries making loans, including how to investigate credit, considering of applicant's income, consideration of expenses and the credit reputation of the borrower.

22. All leases of the office space of the subsidiaries in the various localities were signed by the officers of the subsidiaries respectively.

23. Charles Delmar was not only president of Lincoln but was president of each of the subsidiaries. He determined the amount of interest to be paid and the amount of administrative fees to be paid by the subsidiaries.

24. The procedure relating to the declaration and payment of dividends by the subsidiaries were the following:

The president and other officers and the directors of a particular subsidiary were familiar with its financial condition because of the management in the District of Columbia. If the subsidiary had an operational surplus the president of the subsidiary would determine the amount of dividend that should be declared by the subsidiary. A meeting of its directors was held in Washington, D. C. at which the dividend was declared. The payment of the dividend was effected by the following steps or procedure. A check drawn on an account of Lincoln in Riggs National Bank, Washington, D. C. in the amount of the declared dividend was deposited in an account in the name of two joint agents for all the subsidiaries in the National Sav-

ings and Trust Company, in Washington, D. C. The treasurer of the particular subsidiary in Washington then drew a check or checks on the joint agents' account in the amount of the declared dividend (identified as one paying the dividend of the particular subsidiary) in favor of Lincoln and the minority stockholders, if any, and delivered the check to Lincoln and the minority stockholders,[4] if any.

OPINION

On February 16, 1965, there was entered herein the order following:

> Upon consideration of the Motion for Rehearing and Reconsideration filed by the petitioner on February 3, 1965, it is by the Court this 16th. day of February, 1965
>
> ORDERED, That the aforesaid motion be and the same is hereby granted, subject to the limitation that the rehearing and reconsideration relate solely to the issue of commercial domicile of the subsidiaries of the petitioner; and that the rehearing be had at 10 A.M., March 8, 1965,
>
> AND IT IS FURTHER ORDERED, That the decision herein entered on January 19, 1965, be and the same is hereby vacated and set aside,
>
> AND IT IS FURTHER ORDERED, That leave be and is hereby granted to the respondent to file not later than March 24, 1965, an amendment or substitution to a portion of its answer making specific allegations relating to the domicile of the subsidiaries of the petitioner.

Two rehearings have been held and a supplemental stipulation by the parties has been filed. The Court has considered the evidence thus adduced, has reconsidered that originally presented and has made additional findings of fact.

---

[4] About 35 percent of the 105 subsidiaries had a stockholder other than Lincoln. Most minority stockholders held 3 shares,—never more than 12.

While it is true that the evidence presented by the petitioner on rehearing shows that more services were performed by the local managers and cashiers of the subsidiaries at their respective loan offices outside the District of Columbia, the Court does not believe that such facts negative the conclusion that the important part of the management and the control and direction were carried on in the District of Columbia. The fact that such activities were performed to a large extent by their paid agent, the petitioner, does not show that those services were not in law performed by the subsidiaries.

The Court will adhere to its original ruling that the subsidiaries of the petitioner were commercially domiciled in the District of Columbia during the taxable periods here involved; and that the taxable source of the dividends paid by the subsidiaries to the petitioner was in the District of Columbia. The Court will adhere to its ruling as to the other issues presented.

Conclusion. For the reasons stated the Court holds as follows:

(a) All of the interest paid to Lincoln by its subsidiaries is properly includible in gross income in the computation of net income for the taxable periods involved.

(b) All of the dividends issued or paid by the subsidiaries to Lincoln is properly includible in gross income for the above stated purpose.

(c) For the fiscal year ended June 30, 1958, 42.47 per centum of the administrative fees paid by the subsidiaries to Lincoln is properly includible in gross income; and for the period ended March 16, 1959, 34.87 per centum is includible, for the above stated purpose.

(d) There should be deducted from gross income all expenses incurred by Lincoln in the conduct of its business,

except those connected with, or related to that portion of the administrative fees not includible in Lincoln's gross income for the above stated purpose, that is to say, the portion of compensation for supervisory services performed without the District of Columbia.

Decision will be entered under Rule 30.

Jo. V. MORGAN
Jo. V. Morgan
Judge

Served as follows:

Carl F. Bauersfeld, Esq.
Attorney for Petitioner
1921 Eye Street, N. W.
Washington, D. C. 20006 (Mailed 3/7/66)

Finance Officer, D. C. (Mailed 3/7/66)

Corporation Counsel, D. C. (Mailed 3/7/66)

Phyllis R. Liberti, Clerk

[Filed June 2, 1966]

Computation for Entry of Decision

The attached computation is submitted in compliance with the Court's opinion determining the issues in this case, and it is hereby stipulated that the foregoing decision is in accordance with the opinion of the Court and the agreed computation of the parties and that the Court may enter this decision, without prejudice to the right of either party to contest the correctness of the decision entered herein pursuant to the statute in such cases made and provided.

s/ MILTON D. KORMAN
Milton D. Korman
Acting Corporation Counsel, D. C.

s/ HENRY E. WIXON
Henry E. Wixon
Assistant Corporation Counsel, D. C.

s/ ROBERT E. MCCALLY
Robert E. McCally
Assistant Corporation Counsel, D. C.

Attorneys for Respondent
District Building
Washington, D. C. 20004

ROBERT ASH
Robert Ash

CARL F. BAUERSFELD
Carl F. Bauersfeld

Attorneys for Petitioner
1921 Eye Street, N. W.
Washington, D. C. 20006

STATE LOAN AND FINANCE CORPORATION

Successor by merger to Lincoln Service Corporation

COMPUTATION STATEMENT

	June 30, 1958		March 16, 1959	
Administrative Fees		$ 900,768.57		$650,035.53
Less: Expenses applicable thereto[1]				
Total Expenses	$1,426,486.22		$1,068,811.61	
Less: Expenses applicable to Dividend & Interest Income	1,101,155.38	325,330.84	769,770.48	299,041.13
Net Income to be Apportioned		$ 575,437.73		$350,994.40
Multiplied by Apportionment Factor		.4247		.3487
D. C. Portion		$ 244,388.40		$122,391.75
Add: Income Allocable to D. C.				
Dividends	$ 698,890.14		$ 700,159.00	
Interest	986,806.88		595,197.03	
Total	$1,685,697.02		$1,295,356.03	
Less: Expenses applicable thereto	1,101,155.38	584,541.64	769,770.48	525,585.55
Net D. C. Taxable Income		$ 828,930.04		$647,977.30
Tax @ 5%		$ 41,446.50		$ 32,398.87
Less: Tax Previously Paid		37,341.19		23,798.61
Balance of Tax Due		$ 4,105.31		$ 8,600.26

[1] Expenses Applicable to Dividend and Interest Income:

Interest Expenses		$ 941,473.49		$626,692.53
Long Term Debt Expense		20,254.38		14,917.46
Sub Total		$ 961,727.87		$641,609.99
Total Expenses	$1,426,486.22		$1,068,811.61	
Less: Sub Total Above	961,727.87		641,609.99	
Remaining Expenses	$ 464,758.35		$ 427,201.62	
Multiplied by 30%	.30		.30	
	$ 139,427.51	139,427.51	$ 128,160.49	128,160.49
Total		$1,101,155.38		$769,770.48

[Filed June 3, 1966]

Decision

The petitioner and the respondent having each filed herein its computation under Rule 30, and the Court having considered said computation and the evidence taken at the hearings of this appeal and the findings heretofore made herein, it is by the Court, this 3rd day of June, 1966,

ADJUDGED AND DETERMINED, That a deficiency in franchise tax for the fiscal year ended June 30, 1958, in the amount of $29,910.67, plus interest in the amount of $10,169.63, or a total of $40,080:30 was validly assessed against, and collected from the petitioner;

FURTHER ADJUDGED AND DETERMINED, That a deficiency in franchise tax for the period from July 1, 1958, to March 16, 1959, in the amount of $20,674.31, plus interest in the amount of $6,098.92, or a total of $26,773.23, was validly assessed against and collected from the petitioner;

FURTHER ADJUDGED AND DETERMINED, That the franchise tax for the fiscal year ended June 30, 1958, be and the same is hereby increased by $4,105.31, which amount is due and owing by the petitioner to the respondent;

FUETHER ADJUDGED AND DETERMINED, That the franchise tax for the period from July 1, 1958, to March 16, 1959, be and the same is hereby increased by $8,600.26, which amount is due and owing by the petitioner to the respondent.

Jo. V. MORGAN
Jo. V. Morgan

Served as follows:
Robert Ash, Esquire
Carl F. Bauersfeld, Esq.
Attorneys for Petitioner
1921 Eye Street, N.W.
Washington, D. C. 20006 (Mailed 6/3/66)

Finance Officer, D. C. (Mailed 6/3/66)

Corporate Counsel, D. C. (Mailed 6/3/66)

PHYLLIS R. LIBERTI, *Clerk*

[Filed June 6, 1966]

Petition for Review of a Decision of the District of Columbia Tax Court

To the Honorable Chief Judge and Circuit Judges of the United States Court of Appeals for the District of Columbia Circuit:

1. State Loan and Finance Corporation (Successor by merger to Lincoln Service Corporation) petitions for a review by the United States Court of Appeals for the District of Columbia Circuit, of a decision of the District of Columbia Tax Court made in the above-entitled case.

2. The decision of which review is sought increased an assessment of District of Columbia Franchise Taxes for the fiscal year ended June 30, 1958, and for the taxable period July 1, 1958 through March 16, 1959.

3. The decision of the District of Columbia Tax Court of which review is sought was entered on June 3, 1966.

4. Jurisdiction is conferred on this Court by Section 4 of Title IX of D.C. Revenue Act of 1937, as amended by Act of May 16, 1938, Section 47-2404, D.C. Code, 1961 Edition and Section 3(b) of the Act of July 10, 1952.

CARL F. BAUERSFELD
Carl F. Bauersfeld
1921 Eye Street, N.W.
Washington, D. C. 20006
Attorney for Petitioner

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

2 PROCEEDINGS

The Court: Are you ready to proceed?

Mr. Bauersfeld: Ready to proceed.

The Court: Mr. McCally, I called Mr. Wixon's attention to the fact I was a stockholder of the State Loan and Finance Corporation and if the District had any doubt about my ability to try this case fairly I would have someone else substituted and he said the District had no objection.

Mr. McCally: We certainly have no objection.

Mr. Bauersfeld: May we make an opening statement?

The Court: Yes.

Mr. Bauersfeld: Petitioner State Loan and Finance Corporation is the Successor by Merger to Lincoln Service Corporation. During the fiscal year ended June 30, 1958, and the taxable period July 1, 1958 to March 16, 1959, the taxpayer Lincoln Service Corporation was a Delaware corporation with offices located in the District of Columbia. Lincoln Service Corporation was a holding company owning stock in approximately 105 small loan and finance companies. It was engaged in the business of loaning money and rendering management services to the subsidiary corporations which were located in the States of Florida, Georgia, Kentucky, Louisiana, Maryland, Ohio, Pennsylvania, South Carolina, Texas, Virginia and West Virginia.

3 There were no loan company subsidiaries of Lincoln Service Corporation located in the District of Columbia or conducting business in the District of Columbia during the years here involved. The subsidiary corporations of Lincoln Service Corporation were principally engaged in the business of making small loans to individual borrowers in the localities in which they were located. Generally, each subsidiary corporation was incorporated under the laws of the state in which it operated or was a Delaware corporation qualified in the state in which it conducted its business. The taxpayer, Lincoln Service

Corporation, derived its income solely from (1) interest on loans made to subsidiary corporations; (2) administrative fees paid by its subsidiaries for supervision and management services, and (3) dividends. In connection with earning the management or administrative fees, Lincoln would supply management services to its subsidiaries located in the several states and charge the subsidiary for such services. These services were performed by supervisors employed by Lincoln who kept an eye on the operations of the subsidiary, advised their personnel and reported to Lincoln. The offices of the supervisors were located in the area in which the subsidiaries they supervised were located. In carrying on its business of loaning money and rendering management services, Lincoln Service incurred expenses of salaries, rent, telephone, stationery, postage, insurance and other general operating expenses.

4 In filing its District of Columbia Corporation Franchise Tax Return for the periods here involved, the taxpayer treated the interest received and administrative fees as subject to apportionment in the District of Columbia, and dividends as not subject to apportionment because they were from sources wholly without the District of Columbia and not attributable to any activity of taxpayer in the District. In its return, the taxpayer allocated expenses within and without the District in arriving at an apportionment factor.

The assessor, in the notice of deficiency, did not raise a question that the dividends received by Lincoln from subsidiaries located outside of the District of Columbia were taxable. However, he did disallow a certain amount alleged to be expense deducted in connection with earning the dividend income. The assessor computed the ratio of dividend income to total gross income. He then applied this percentage factor to the total expenses of the taxpayer whether such expenses were incurred within or without the District of Columbia, and disallowed as a deduction the resultant product which amounted to $385,315.74 for

the fiscal year ended June 30, 1958, and $384,671.71 for the period ended March 16, 1959. This computation of the assessor completely disregards (1) whether such expenses were incurred within or without the District of Columbia and (2) whether they had any relationship to the receipt by the taxpayer of dividends. During the fiscal year ended June 30, 1958, the taxpayer received dividends in the amount of $698,890.14. The amount of expense determined by the assessor to be disallowed on account of the dividends for said period is $385,315.74. For the taxable period ended March 16, 1959, the taxpayer received dividends of $700,159. The amount of expense determined by the assessor to be disallowed on account of the dividends is $384,671.71. It is the taxpayer's position that it incurred no expense in the earning or receipt of the dividend income.

The second issue involves interest expense for purposes of determining the apportionment factor. The taxpayer in its returns for the periods here involved allocated expenses within and without the District of Columbia with respect to interest and long-term debt expense. The taxpayer treated as expenses within the District interest paid to payees located within the District, and treated as without the District all interest and long-term debt expense paid to lenders outside the District of Columbia. The assessor has treated as expense within the District all interest and long-term debt expense paid regardless of to whom or where paid. It is the petitioner's position that the situs of a payee determines whether the expenses are incurred within or without the District, and that the apportionment factor was properly determined by the return.

The District of Columbia, by an affirmative answer, now takes the position (1) that Lincoln Service Corporation is engaged in business wholly within the District of Columbia, or (2) in the alternative, if engaged both within and without the District of Columbia, it derived all income from activities conducted within the Dis-

trict of Columbia. The petitioner denies these affirmative allegations and contends that its returns as filed were proper.

The Court: Mr. McCally.

Mr. McCally: I will reserve at this time.

The Court: Are you going to have any witnesses?

Mr. McCally: No I am not, Your Honor.

The Court: What allegations of the petition will the District admit?

Mr. McCally: In our answer I think we have admitted the first four. We admitted the first two sentences—

The Court: You didn't admit the allegations to errors, did you?

Mr. Bauersfeld: I am afraid they did, Your Honor.

Mr. McCally: I am afraid that is a typographical error.

The Court: Do you want to amend your answer?

Mr. McCally: I think I had better.

The Court: Do you have any objection to the amendment physically in the answer?

Mr. Bauersfeld: No, we have no objection.

The Court: Where is that?

Mr. McCally: The first answer, 1, 2, 3 and 4, says
7 "the respondent admits all allegations in the complaint". We admit paragraph 1.

The Court: Let's change 4 to 3. Proceed.

Mr. Bauersfeld: By agreement we would like to introduce into evidence the corporation franchise tax return for the calendar year 1957 of the Lincoln Service Corporation and have it marked as Exhibit 1.

The Court: You have no objection?

Mr. McCally: No objection.

Mr. Bauersfeld: Fiscal year ended June 30, 1958.

The Court: It will be received as Petitioner's Exhibit Number 1.

(Petitioner's Exhibit No. 1, Counsel Bauersfeld, was marked for identification and received in evidence.)

Mr. Bauersfeld: By agreement I would like to introduce into evidence as Petitioner's Exhibit No. 2 the Corporation Franchise Tax Return of the Lincoln Service Corporation for the period July 1, 1958 to March 16, 1959.

The Court: That will be received as Petitioner's Exhibit Number 2.

(Petitioner's Exhibit No. 2, Counsel Bauersfeld, was marked for identification and received in evidence.)

Thornton Burnet.

called as a witness by and behalf of the Petitioner, being first duly sworn, was examined and testified as follows:

The Court: Give your name and address to the reporter.

The Witness: Thornton Burnet, R.D. 2 Vienna, Virginia.

Direct Examination

By Mr. Bauersfeld:

Q. What is your occupation? A. I am Vice-President of the State Loan and Finance Management Corporation.

Q. During the year 1957 to March 16, 1959 what was your occupation? A. I was Vice-President and Secretary of the Lincoln Service Corporation.

Q. What was the business of Lincoln Service Corporation? A. It was the lending of money and the rendering of management services.

Q. Did Lincoln Service Corporation own any stock in any other corporations? A. Yes it had stock in approximately 105 small loan finance companies.

Q. Did the Lincoln Service Corporation and its subsidiaries operate under the laws of the states in which they were located or state in which it was incorporated? A. Yes.

Q. Did Lincoln Service Corporation have an office in the District of Columbia? A. Yes.

Q. Where were Lincoln Service subsidiaries located? A. Florida, Georgia, Louisana, South Carolina, Kentucky,

Virginia, West Virginia, Maryland, Pennsylvania, Ohio, and Texas.

Q. In what States were they incorporated? A. Usually they were incorporated in the state in which they were qualified to do business in which they were incorporated.

Q. How many loan offices did you have during this period? A. In the District?

Q. How many subsidiary loan offices did you have? A. Approximately 105.

Q. Each loan office is a separate corporation? A. Yes sir.

Q. Were any subsidiaries wholly owned, were they subsidiaries wholly owned by Lincoln? A. No. Approximately 75 percent had minority interests.

Q. Were these minority interests merely qualifying shares? A. No.

Q. What was the nature of the income received by Lincoln during the Fiscal Year ended June 30, 1958 and
10 the period ended March 16, 1959? A. During these periods Lincoln had three sources, interest income, administrative fees and dividends.

The Court: What do you mean by administrative?

The Witness: For management services we performed for the small loan companies.

By Mr. Bauersfeld:

Q. You used administrative fees as synonymous with management fees? A. Yes sir.

Q. What did management do to earn its income? A. When subsidiaries needed additional money Lincoln would advance them the money and take an interest-bearing note. It was this interest that was the interest income.

Q. To Lincoln Service? A. Yes.

Q. What did Lincoln do to earn administrative fees or management fees? A. We had a group of men called supervisors. The supervisors, there were approximately 11 of them, they were headquartered in the States in which we

had these small loan companies. Their job was to supervise these eight to 10 small loan offices.

Their duties would consist primarily of a visit to the office, investigate thoroughly all loans that had been
11 made since their last visit. They would sit down with the manager and review what he had done, try to correct any errors that they felt he had made and admissions with the girls. And with the girls they would check on their reporting and handling of customers. They were teachers.

Q. How often would a supervisor visit a particular office? A. We would like to have him get in the office about every six or eight weeks.

Q. Were you responsible for the services rendered by the supervisors? Were any other services rendered? A. By Lincoln Service Corporation?

Q. Yes. A. Yes. We filed reports, did accounting services, purchasing advertising, things of this nature for subsidiaries.

The Court: I don't know whether your testimony is that these services were performed outside of the District or whether they were performed in the District.

The Witness: The preparation of the reports were done in the District but the supervision, the main function, was performed in the field.

The Court: What about the income tax returns?

The Witness: They were prepared in the District.

The Court: What other service?

The Witness: I think I have enumerated them.
12 The Court: What were they?

The Witness: Purchasing, such as printing, and supplying of forms. This was a function that was handled out of headquarters' office.

The purchasing of advertising for distribution for the local office, the fringe type of thing that was necessary to run a corporation.

The Court: And you say your compensation for services included all of those things that you have mentioned?

The Witness: Yes sir.

The Court: Was any of the service of the supervisors performed in the District of Columbia?

The Witness: No sir. By the very nature of their work they were all performed in the States in which we have these small loan companies.

By Mr. Bauersfeld:

Q. What did Lincoln do to earn dividends? A. Nothing.

Q. Did it receive dividends from all of its subsidiaries during the Fiscal Year ended June 30, 1958 and the period ended March 16, 1959? A. No.

Q. What determined whether Lincoln received a dividend from a subsidiary or not? A. First the subsidiary
13 had to have a profit and then secondly the Board of Directors of that subsidiary had to clear it.

Q. Where would the profits of those subsidiaries come from? A. From the office in the States in which I said they operated.

Q. When a subsidiary declared and paid a dividend did Lincoln receive the entire dividend paid? A. No.

The minority stockholders also received their proportionate share.

Q. What expense did Lincoln incur in the receipt of dividend income? A. None.

Q. How often—

The Court: You are indulging in leading questions that leave me cold. You are testifying. Let him testify. That is his conclusion. You ought to ask him what was done.

By Mr. Bauersfeld:

Q. What did Lincoln do upon the receipt of the dividend? A. Deposited them in one of its bank accounts.

The Court: They must have had to keep records and things of that kind.

The Witness: It would be a mere clerical function.

The Court: That was an expense, wasn't it?

14 That shows you the trouble with leading questions.

By Mr. Bauersfeld:

Q. How often did any given subsidiary pay a dividend? A. Never more frequently than once a year.

Q. In the receipt of dividends did Lincoln incur any expenses for officers' salaries? A. Not in my opinion.

Q. For other employee salaries? A. I don't think you could allocate any portion of that to receipt of dividends.

Mr. McCally: I object. It calls for a legal conclusion.

The Court: Let him testify what they had done.

Here are offices of the company. They have to have offices in the District of Columbia. They receive a dividend. They must keep an accounting of it. There must be some expense in connection with receiving dividends.

Even an individual has to keep a record of it. He has to give the numbers. Every individual has to keep a record of receipts. You are bound to have some expense to it. There are clerks and rents and things of that kind.

Let him testify that certain clerks had to attend to the income. You don't take it and put it in a waste basket. You have to take it down to the bank and make up a deposit slip.

By Mr. Bauersfeld:

15 Q. What did Lincoln do upon the receipt of a dividend check? A. Upon the receipt of a dividend check they were taken in, recorded and deposited in a bank.

Q. Anything else? A. This would be the real extent. It would be a very minor thing.

Q. During the fiscal year ended June 30, 1958 and the period ended March 16, 1959 did Lincoln receive any dividend from subsidiaries operating in the District of Columbia? A. No.

Q. Did Lincoln during this period receive any income—

The Court: Now you are asking a leading question.

So today I am going to try to teach lawyers how to avoid using leading questions. It isn't necessary.

Why not ask him what was received and where did it come from?

By Mr. Bauersfeld:

Q. Did Lincoln receive during this period any income from individuals or corporations located in the District of Columbia?

The Court: Ask him during that period from whom did Lincoln receive it.

By Mr. Bauersfeld:

Q. From whom did Lincoln receive income during
16 this period? A. The Lincoln Service Corporation received interest income. This was received from subsidiaries operating in the various States.

It received dividends from certain of its subsidiaries. It also received the administration fees from practically all of its subsidiaries.

Q. Where were these subsidiaries located during this period?

The Court: He testified there weren't any located in the District of Columbia.

By Mr. Bauersfeld:

Q. Where did Lincoln obtain money to make loans to subsidiaries? A. From its own stock, from its own earnings, short-term borrowings from the bank and long-term loans from the public and from long-term lenders.

Q. What did they consist of? A. The short-term and long-term?

Q. Yes. A. The short-term borrowings consisted of from banks and I think all of them from the Mutual Life Insurance Company of New York located in New York.

Q. How were the loans actually obtained? A. The
17 loans would actually be obtained by having the bank advance the money on a note.

Q. Would that be a line of credit? A. He would first secure a line of credit by a visit to the bank and make the arrangements. After the arrangements were made it would be a clerical function to send the note out. This would be on short term. A long term you would make one trip. Once that was done then that would hold until that particular note expired.

Q. How did Lincoln pay its interest in general? A. By check.

Q. And to whom? A. To the lender concerned.

Q. Where were the lenders located? A. Within and without the District.

Q. Where were the long-term lenders principally located ? A. Principally located in New York City.

Q. What proportion of Lincoln's debt with short-term compared with long-term? A. For the period ended June, 1958 the proportion was approximately eight million to 10 million, eight million short and 10 million long, approximately, and for the period ended March 16, 1959 it was approximately even, nine million of each.

Q. In arriving at the apportionment formula on the franchise tax return how did Lincoln treat interest in long-term debt expense as being within and without the
18 District of Columbia?

The Court: Doesn't it appear on the income tax return?

Mr. Bauersfeld: The numbers appear but what they did—

The Court: If it needs explanation that is something else. To merely recite what the income tax return shows, no.

Mr. Bauersfeld: That isn't the purpose of the question.

The Court: I think you had better identify the situation.

By Mr. Bauersfeld:

Q. I hand you Petitioner's Exhibts 1 and 2 and ask you how did Lincoln determine what interest on long-term

debt was within the District of Columbia and what was without the District of Columbia with respect to expense? A. This we would go to the periods concerned and actually check back to the banks and where we paid the money. If the bank or the lender was located within the District it was considered as interest within the District. If the bank or lender was located without the District it was considered without the District.

The Court: You mean the payments were made without the District if the bank was without?

The Witness: That is what we considered, yes sir.

19 The Court: In other words, you considered the source of the interest was where the interest was made?

The Witness: Yes sir, when the source of the funds.

The Court: Was paid.

The Witness: That is right.

Mr. Bauersfeld: You may inquire.

Cross-Examination

By Mr. McCally:

Q. Mr. Burnet, when did you first come with Lincoln Service Corporation? A. I first started with the Lincoln Service Corporation in February, 1941.

I worked for a subsidiary prior to that time, June, 1940.

Q. Were you with them at the time they merged with State Loan? A. Except for a period during the Army.

Q. When was that time, during the War? A. From 1940 to 1943.

Q. Who was the President of Lincoln Service during the first period we are inquiring about, the period ending June 30, 1958? A. Ralph G. Blasey. I am not positive of the exact time this change took place.

Q. Was he also at that time President of any of

20 the subsidiaries? A. Mr. Blasey?

Q. Yes. A. No sir.

Q. Was he an officer in any of the subsidiaries? A. Yes.

Q. What position did he hold? A. Vice-President.

Q. Do you know in how many subsidiaries he held that position? A. Are we talking '58 now? I think all of them.

Q. The period ending June 30, 1958? A. Yes.

Q. Who was Vice-President of Lincoln Service at this time? A. I was.

Q. Did you hold any office in any subsidiaries? A. Assistant Treasurer and Assistant Secretary.

Q. How many? A. All of them.

Q. Was it a Secretary and Treasurer or combination? A. I might have been Secretary of the subsidiaries and Assistant Treasurer and Treasurer.

Q. Did he occupy any positions in the subsidiaries? A. Yes.

21 Q. Of all of the subsidiaries? A. Yes sir.

Q. During this period who were the members of the Board, or Directors of Lincoln Service Corporation? A. I will try and name them for you.

Charles Delmar, Ralph G. Blasey, Ellsworth C. Alford, Frank B. Sevarance, James Johnson, Page Hufty. I can't recall any more at the moment. There were others.

Q. Did these men who occupied this position on the Board of Directors occupy a similar position in the subsidiaries? A. Not in all cases.

Q. Were some of them on the Board of Directors of subsidiaries? A. Some of them were.

Q. Would you say a majority of them were? A. No sir.

Q. At that time were you on the Board of Directors of any of the subsidiaries? A. Yes.

Q. How about the President and Vice-President and Secretary and Treasurer were they on the Board of Directors of the subsidiaries at this time? A. Not all of them, not necessarily. I may amend that to the President, Mr. Delmar was on all of them.

Q. During this same period where were the Board

22 of Directors meetings of Lincoln Service Corporation held? A. In the Woodward Building, Washington, D. C.

Q. Where were the Board of Directors meetings of the subsidiaries held? A. Same place.

Q. Were they generally the same Board of Directors? A. No sir.

Q. Who kept the books and records of the subsidiary corporations? A. The Lincoln Service Corporation.

Q. Were they kept in the District of Columbia? A. They were.

Q. Was it personnel of Lincoln Service Corporation which maintained these books and records? A. Yes.

Q. Entirely? A. We had auditors who helped.

Q. Did you make up payrolls for the subsidiary corporations? A. I believe the answer to that is no.

The Court: I don't understand your question, you mean him personally?

Mr. McCally: Lincoln Service?

The Witness: No.

By Mr. McCally:

23 Q. Where was the personnel of the subsidiaries paid? A. In the field.

Q. They were paid from the funds of the subsidiary? A. That is right.

Q. How were the officers of the subsidiaries paid? A. They received no salary.

Q. Did they receive a salary for being officers of Lincoln Service Corporation. A. Yes.

Q. And did they receive compensation for serving on the Board of Directors of Lincoln Service Corporation? A. If they served on the Board, yes.

Q. Did they receive compensation, if these same men served on the Board of Directors of subsidiaries? A. Yes.

Q. Additional compensation? A. Yes.

Q. Who paid the additional compensation? A. The subsidiary.

Q. The subsidiary paid them? A. It was charged to the subsidiary.

Q. Was it paid in the District? A. Yes.

Q. Was the check paid through Lincoln Service Corporation? A. I didn't handle it. I don't know.

24 The Court: What check do you mean?

Mr. McCally: I am asking if the actual check which paid this fee was it paid by Lincoln Service Corporation.

The Court: You said paid to.

Mr. McCally: I meant paid by Lincoln Service Corporation.

The Court: He said it was paid by the subsidiary. It was charged. Do you know whether or not it was actually paid by Lincoln Service?

The Witness: I didn't handle that. I don't know.

By Mr. McCally:

Q. I believe you discussed certain management fees. A. Yes.

Q. I believe you charged the subsidiaries the management fee, is that correct? A. That is correct.

Q. Was that primarily for the use of these supervisors who audited the books and went out in the field, or did it include other things? A. It included others.

Q. Can you enumerate what they were? A. It included the general expenses of Lincoln Service which were devoted towards management end. I don't think you could break them out.

25 Q. You are unable to break them out? A. I am unable to break them out.

Q. These supervisors they were employees of Lincoln Service Corporation, is that correct? A. Yes sir.

Q. You say these people were continually in the field supervising subsidiaries? A. Yes. They would occasionally come to Washington to make reports.

Q. Would you say they were continually in a travel status or primarily? A. Primarily travel status, yes sir.

Q. Who paid these transportation costs? A. Lincoln Service.

Q. Could you break it down percentage-wise, let's say the time they spent in the District of Columbia as opposed to the time they spent in the field?

The Court: Let me see if I understand your question.

The Witness: You are talking about supervisors only?

By Mr. McCally:

Q. Yes. A. 98 percent of their time in the field.

Q. You stated that Lincoln Service had their Executive Office in the District of Columbia? A. Yes.

26 Q. Would you characterize that as their principal office? A. Yes.

The Court: Mr. McCally, I take it these questions relate to your claim under the pleading that you filed?

Mr. McCally: Yes, Your Honor.

By Mr. McCally:

Q. Can you tell me if all of the officers of the subsidiaries were located in the District of Columbia? A. What do you mean by located, did they live here?

Q. Did they work here? A. They worked here. Some of them lived in Maryland and some in Virginia.

Q. Did any subsidiaries file any District of Columbia tax returns? A. Not to my knowledge.

Q. I believe that you stated that Lincoln Service was the majority stockholder in all of these subsidiaries? A. Yes, sir.

Q. Were most of the minority stockholders officers of the corporation or members of the Board of Directors? A. Most of them probably were.

Q. Lincoln Service maintains certain lines of credit outside the District of Columbia I assume to borrow and so on? A. Yes.

Q. Can you tell me what the cost of keeping these
27 lines of credit open were to Lincoln Service? A. I couldn't estimate that to you.

Q But there was cost involved, I assume. A. There would be some cost, yes.

Q. Did certain of the officers of Lincoln Service Corporation devote a good deal of their time to this phase of the business, to maintain and keeping open these credit lines? A. Mr. Delmar and Mr. Blasey devoted a portion of their time to this phase of the business. I don't know how much of their time.

Q. Would you say it was substantial? A. I can't answer it.

The Court: What do you mean by keeping lines of credit open?

Mr. McCally: So they could borrow money when they needed it.

The Court: What do you mean by keeping it?

Mr. McCally: I think when you are in the business of borrowing money, such as Lincoln Service was to a point, they had to maintain credit lines.

The Court: What do you mean by keeping open, entertaining the President of a bank?

Mr. McCally: Whatever they had to do to keep it open.

The Court: I don't understand the question.

By Mr. McCally:

28 Q. Do you know during this period whether Lincoln Service Corporation paid either income or corporation franchise tax to other jurisdictions? A. To my knowledge they did not.

Q. Do you know what the interest rate was on these long-term borrowings that Lincoln Service engaged in, approximately? A. Not at this date. They would range, I would have to make a guess, from four and seven-eights to five and one-half and five and three-quarters, in that area.

Q. When you in turn loaned this money out to subsidiaries what rate did Lincoln charge subsidiaries? A. We would charge them one percent above the prime rate.

Q. Was this designed to show a profit, do you recall? A. We would show a slight profit just on pure interest. Whether or not there was a profit on the other expenses, I don't know.

Mr. McCally: Your Honor, at this time I have several returns for Lincoln Service Corporation I believe for the fiscal year 1954, '55, '56 and '57 which I would like to have marked for identification at this time.

The Court: Hand them to the reporter and they will be marked for identification starting with Respondent Exhibit Number 3.

29 (Respondent's Exhibits 3, 4 and 5, Witness Burnet, were marked for identification.)

The Court: I am in error. It should be numbered A, B and C.

(Respondent's Exhibits A, B, C and D, Witness Burnet, were marked for identification.)

Mr. McCally: I want to offer in evidence Respondent's Exhibits A, B, C and D.

The Court: I didn't know you wanted to offer them until the case was closed.

Mr. McCally: I am sorry, Your Honor, I forgot.

By Mr. McCally:

Q. When long-term money was borrowed were you required to leave a certain amount on deposit? A. No sir.

Q. On the short term borrowings were you? A. Yes sir.

Q. What percentage were you required to leave on deposit? A. Generally 20 percent.

Q. When you in turn made loans to subsidiaries, did you retain a portion of that on deposit with Lincoln Service or did you loan all of that? A. If the subsidiary borrowed $10,000 we advanced them $10,000.

Q. Were all the policy decisions and guide lines
30 that were established, were they established for the subsidiaries by Lincoln Service and its employees generally?

The Court: Mr. McCally, I know you know what you mean by policy and guide lines but I don't. Suppose you get more detail.

By Mr. McCally:

Q. Did Lincoln Service Corporation determine the lending policy of the subsidiaries? A. You are talking now about loans to the borrowers?

Q. Generally speaking, yes.

Did they set down certain guide lines or certain policies which governed the manner in which the subsidiary could loan money or to whom they would lend money? A. There would be several factors.

The State law first would be the real guide line. Within that we would try to establish areas in which the manager should make his judgment as to whether or not he would approve a loan.

Q. The supervisor who went out was that one of their jobs to see that each subsidiary manager stayed within these guide lines? A. I don't think you want to say stayed within them but exercise proper judgment.

Q. Exercise proper judgment then. A. Yes.

31 Mr. McCally: Your Honor at this time I would like to look at one of these returns. I was wondering if we could have a five-minute recess.

The Court: We will have a five-minute recess.

(Five-minute recess)

The Court: All right.

By Mr. McCally:

Q. Mr. Burnet, when dividends were declared by the subsidiares where was the dividend declared? A. The Board of Directors met here in Washington.

Q. How was the dividend actually paid? A. You mean the mechanics?

Q. Yes sir. A. The actual mechanics was the Treasurer of the subsidiary drew a check and this check was the dividend.

Q. Where was the check drawn? A. Here in the District.

Q. It wasn't a bookkeeping entry. He actually drew a

check here in the District and that check was processed in the normal procedure? A. Yes.

Q. Do you know if any of these corporations that declared dividends and paid them, were they subject to the District of Columbia corporation tax, do you know? A. I don't know.

32 The Court: What was that question?

Mr. McCally: I wanted to know if any of these subsidiaries that declared a dividend paid District of Columbia corporation tax?

The Witness: I don't know.

By Mr. McCally:

Q. Did I understand you to say that during this period we are discussing that there were no subsidiaries in the District of Columbia? A. No subsidiaries operating in the District of Columbia.

Q. I want to call your attention to the return filed for the period ending June 30, 1958, Petitioner's Exhibit Number 1, and ask you to turn to the page that lists the different subsidiaries.

I believe that on the list in the return there are four subsidiaries that show the address as Washington, D. C. Is that a mistake? A. Which subsidiaries are you talking about?

Q. Dealers Credit, Universal Management Corporation, Manufacturers Credit Corporation and Credit Insurance, Inc. A. Dealers Credit Corporation operated without the District.

Universal Management Corporation operated in Texas, Manufacturers Credit Corporation is a corporation which we did not consolidate. I don't consider it a subsidiary.

33 The Court: I didn't hear the answer to that.

The Witness: Manufacturers Credit Corporation was a subsidiary which we did not consolidate.

Lincoln Service is parent and the stock ownership would consolidate and show on the balance sheet consolidated.

Manufacturers Credit Corporation was not consolidated into this balance sheet.

We owned a majority of the stock but there was substantial stock sold to the public and therefore we did not group it into the same classification as the other subsidiaries.

By Mr. McCally:

Q. But you did show Washington, D. C. corporation. A. Yes. That corporation did have an office in the District of Columbia.

Q. Located in the District of Columbia? A. Yes.

Q. Do you know whether or not they paid a District of Columbia corporation tax? A. I do not know.

The Court: Were you a stockholder of it?

The Witness: Lincoln Service you are talking about?

The Court: I am talking about Lincoln Service.

The Witness: Lincoln Service owned stock. It had other officers and directors who, with the interlocking, was not as prominent. Only Mr. Delmar served on both boards.

34 The officers of Manufacturers Credit, the active officers, did not serve on Lincoln Service Corporation. They were operated separate and distinct with the sole distinction of stock ownership and one or two officers.

By Mr. McCally:

Q. Mr. Burnet, on the same exhibit I want you to turn to the page which shows the income from dividends.

I believe that this return shows a credit insurance corporation which is listed in Washington, D. C., and Universal Management Corporation paid a dividend during that period. A. It was a liquidating dividend. This corporation was not in operation.

Q. What about Universal Management? A. It operated in Texas.

Q. They did pay a dividend during this period? A. Yes.

Mr. McCally: I have no further questions on cross-examination.

Re-Direct Examination

By Mr. Bauersfeld:

Q. What did the subsidiaries do to declare and pay dividends? A. First in the locality in which they operated they had to earn a profit in the making and collecting of loans.

Secondly, after the profit made a sufficient point
35 the Board of Directors in their discretion would or would not declare a dividend.

Q. What did Lincoln Service do upon the receipt of the dividend? A. Just recorded them and deposited them in one of its bank accounts.

Q. Did Lincoln Service have anything to do with the declaring of dividends? A. Lincoln Service Corporation as such, no sir.

Q. With management Service as rendered to Manufacturers Credit Corporation? A. No.

Q. Or Universal? A. Universal Management was merely a corporation in between Lincoln and the Texas operations.

Q. Lincoln rendered Universal no services? A. We did keep their books. That is all.

The Court: Did you get paid for it?

The Witness: From Universal Management, no sir. We did advance some money and they loaned it and we received the same amount of interest as the other subsidiaries, but there were no management fees.

By Mr. Bauersfeld:

Q. What taxes were paid by Lincoln Service Corporation?

The Court: Isn't that in the income taxes?

36 By Mr. Bauersfeld:

Q. What taxes to any other jurisdiction were paid by Lincoln Service? A. We did pay the State of Delaware a franchise tax.

The Court: That is just for the existence of being a corporation?

The Witness: Yes sir.

Mr. Bauersfeld: That is all.

Re-Cross-Examination

By Mr. McCally:

Q. Mr. Burnet, during this time who was responsible for filing the tax returns for Lincoln Service, did you have anything to do with it? A. Yes I had something to do with these returns.

Q. Who filed the franchise returns for the subsidiaries during that period? A. Peat, Marwick and Mitchell who were an auditing firm.

Q. Were they under your direct overall, did you check the returns or did you have any authority with them? A. I had some authority perhaps with them but I didn't check the returns.

The Court: You employed them?

The Witness: Yes, we employed them and they prepared them. They would do the figuring and we would sign them.

By Mr. McCally:

37 Q. I want to show you what purports to be a corporation franchise tax to the District for the calendar year 1957 filed by Dealers Credit.

Was that return supervised by you, the filing and preparation? A. I can't recall. I signed it but I didn't prepare it.

The Court: You signed it.

The Witness: Yes.

Mr. McCally: I would like to have this marked Respondent's Exhibit E for identification.

The Court: All right.

(Respondent's Exhibit "E", Witness Burnet, was marked for identification.)

Mr. McCally: I have no further questions.

The Court: Mr. Burnet, was any written agreement between the subsidiaries and the parent company in respect of the services to be performed and compensation?

The Witness: No sir, there was no written agreement.

The Court: What was it, oral agreement?

The Witness: Understanding.

The Court: I don't know what you mean by understanding. With whom did you have the understanding?

The Witness: We never formalized an agreement in writing.

The Court: I didn't ask you that. I asked you
38 with whom did you have the understanding.

The Witness: With ourselves in essence because we owned the stock.

The Court: You mean you agreed with yourself?

The Witness: I think it is rather difficult. Mr. Delmar is the Chief Executive Officer and occupied two positions.

The Court: He agreed?

The Witness: Yes.

The Court: What was the agreement?

The Witness: We would render the services which I think I have enumerated for a fee.

The Court: What are they?

The Witness: Supervision in the field that took place with our supervisors. This would be the checking of the loans and the instructions.

In addition to that we would render other services, such as printing and things of this nature for them.

The Court: And obtain the money?

The Witness: Yes.

The Court: And doing all the things that you have outlined what you did for them?

The Witness: Yes sir.

The Court: And the compensation received they were supposed to pay you for it?

39 The Witness: Yes sir.

The Court: It was not put down in any memorandum?

The Witness: No sir.

The Court: Just something in Mr. Delmar's mind?

The Witness: I can't pinpoint it to an individual.

Yes, you would have to say Mr. Delmar was the Chief Executive Officer.

The Court: He would meet with himself?

The Witness: In essence.

The Court: Did he tell anyone how that expense was to be allocated?

The Witness: You mean the fee that we received, how we would allocate it back?

The Court: Yes.

The Witness: We just took it in as income.

The Court: How would you know how much was paid for bookkeeping and so forth?

The Witness: We didn't break it out.

The Court: You have told me all the definiteness of the situation?

The Witness: I think so.

The Court. All right.

By Mr. Bauersfeld:

Q. How were the fees, the amounts and so forth,

40 that the subsidiaries paid to Lincoln determined? A. They were based on a schedule which was on the outstanding loan balance. These were the working assets of the subsidiary and we charged a fee based on this outstanding. The fee was the same for each subsidiary.

Q. So it was definite to the extent of the amount to be charged? A. Yes.

The Court: He said the outstanding loan balance.

The Witness: Based on that outstanding loan balance.

The Court: If one corporation had 100,000 and the other 50,000, one would pay twice as much?

The Witness: Yes.

By Mr. Bauersfeld:

Q. But the percentage to be charged would be the same? A. All offices with loan balances of 50,000 would pay identical fees, all offices with 100,000 would pay identical fees.

The Court: Mr. Burnet, you stated that in respect to some corporations there was a small portion of the stock held by individuals?

The Witness: Yes sir I did.

The Court: What percentage?

The Witness: It would get up to 10 percent. The percentage that we owned is listed here. We would
41 own 92 percent, 99, 100 percent. I think one company may have gotten down to 88 percent.

The Court: Did the stockholders who had the 10 percent buy this stock?

The Witness: Yes sir, the same price that Lincoln paid for it.

The Court: What did the company pay for it?

The Witness: Whatever the subscription rate was. If it was set at a dollar a share Lincoln paid a dollar and the stockholder paid a dollar.

The Court: All right.

Mr. Bauersfeld: No further questions.

Mr. McCally: I have no further questions on cross-examination.

The Court: Thank. You are excused.

(The witness was excused)

Mr. McCally: Your Honor, I might suggest that Mr. Burnet stay there a minute. I may want to put him on as

my witness. I am not sure yet. That will save him the trouble of getting up and down.

The Court: You want to use him as a witness?

Mr. McCally: First I want to offer my exhibits.

The Court: Have you finished your case?

Mr. Bauersfeld: I have finished with this witness.

The Court: Do you have another witness?

42 Mr. Bauersfeld: I have no other witness.

The Court: Then we will go into your case, Mr. McCally.

Mr. McCally: I want at this time to offer in evidence Respondent's Exhibits A through D.

Mr. Bauersfeld: May I inquire of the purpose of the offer of the returns for prior years other than the returns before the court?

Mr. McCally: I use these to show the different charges for interest, different charges for management expenses, to show a pattern for the previous years.

The Court: Historical?

Mr. McCally: Yes.

The Court: Do you have any objection?

Mr. Bauersfeld: No objection.

The Court: They will be received in evidence.

(Respondent's Exhibits A through D, Witness Burnet, were received in evidence.)

Mr. McCally: At this time I also want to offer in evidence Respondent's Exhibit E, Corporation Franchise Tax Return for the Calendar Year 1957 of Dealers Credit.

The Court: What is the purpose?

Mr. McCally: To show that a subsidiary did in fact pay the District of Columbia Franchise Tax.

The Court: Any objection?

43 Mr. Bauersfeld: No objection.

The Court: It will be received in evidence.

(Respondent's Exhibit E, Witness Burnet, was received in evidence.)

Mr. McCally: I would like to substitute a copy since this is the original.

The Court: It will be permitted.

Mr. McCally: Your Honor I am going to call Mr. Burnet as my witness at this time.

The Court: All right.

Direct Examination

By Mr. McCally:

Q. Mr. Burnet, I want to hand you these tax returns filed by Lincoln Service for the Fiscal Years 1954 to March 16, 1959 and on there I want to call your attention particularly to the years ending June 30, 1956, June 30, 1957 and March 16, 1959 as to the net income derived from interest. A. Yes sir.

Q. You know those years I have mentioned you show a loss actually as far as the interest rates are concerned? A. I don't know that, sir.

Q. And also for the year ending June 30, 1958 which I believe shows a net income of slightly over $25,000.

Mr. Bauersfeld: I don't understand the question.

Mr. McCally: I asked him if he could identify net
44 income derived from interest to be slightly over $25,000.

The Court: Do you want to ask him a question about it?

Mr. McCally: I want to see if he can find it. The report which I have ending June 30, 1958 shows interest income of $986,000. The interest expense, if I am reading right, shows $941,000.

The Witness: Are you talking about the difference between the two?

By Mr. McCally:

Q. Yes. A. The difference between those two items is $35,000.

Q. Mr. Burnet, do you know whether or not for the

periods I have pointed out in these returns it was the policy of Lincoln Service to intentionally keep the interest rate low? A. No sir, it is not that policy.

Q. What was the reason for this closeness here, the losses in some years and the various what I call in substantial amount of profit considering the amount of interest involved. A. I think I mentioned we charged one percent above the prime. When prime would change, and during these periods it may have changed rather rapidly, we may not change with it. If we were late it would account for these fluctuations.

Q. Did you consider a one percent difference a fair rate of return as far as Lincoln Service was concerned considering that in order to borrow this money they had to pay somewhere between four and five percent? A. Yes, we considered that as a proper charge.

Q. You consider it a fair rate of return as far as interest income is concerned? A. I don't think I can answer that.

The Court: What he meant is this. I suppose he thinks you are an expert in the matter. He wants to know where you paid four and three-quarters percent and five percent and turned around and charged one percent, and whether that one percent is a fair charge or profit which you make on the transaction.

The Witness: I think I would agree with this rate that was set up, it was proper during the period concerned.

The Court: That is what you asked him, wasn't it?

Mr. McCally: Yes, Your Honor.

I have no further questions.

Mr. Bauersfeld: No further questions.

The Court: Thank you. You are excused.

(The witness was excused)

The Court: Are you ready to comment on this case? I am going to give you an opportunity to file a memorandum. Today I will be thinking about this case. If you have any observations you want to make I will be glad to hear them. I have some questions I want to ask Mr. McCally now.

Mr. Bauersfeld: I shall be glad to briefly tell
46 you our position.

The Court: I want to ask you a question before you do that.

As I understand it as far as you are concerned the only question involved in your case is the matter of expenses, allocation of expenses.

Mr. Bauersfeld: If I understand the Court correctly the only question with respect to interest is the allocation of expenses and with respect to dividends is allocation of expenses.

The Court: You are not claiming that you made a mistake by including certain income in your returns?

Mr. Bauersfeld: No we are not.

The Court: You are not claiming refund?

Mr. Bauersfeld: No.

The Court: You do object to the District's answer or plea?

Mr. Bauersfeld: Very much so.

The Court: Suppose you give me your observations.

Mr. Bauersfeld: First it is that the petitioner did not incur any expense in receipt of dividends from subsidiaries operating without the District of Columbia and we say this is a question of fact, primarily as to whether or not the petitioner incurred expense in receiving dividends from its subsidiaries.

The Court: Let me ask you do you claim that they
47 did incur some expense?

Mr. Bauersfeld: No, we claim they did not in the receipt of dividends.

The Court: Did not incur any expense?

Mr. Bauersfeld: That is right.

The Court: What about the office that you have here and the clerks running to the bank to deposit the money and keeping records and so forth?

Mr. Bauersfeld: If your Honor please, it is our position that this is deminimus. All the earning of the dividend was accomplished out in the State.

The Court: You are talking about the source of income. I am talking about expense. You are a tax attorney and you know that the Federal Government allows taxpayers to deduct expenses incurred in the collection of income, such as bookkeeping and depositing in a safe deposit box and things of that kind. Why isn't this expense? They have to keep a record, they have clerks? Don't they have expenses in connection with this receipt of income?

Mr. Bauersfeld: They had to have these people to render the management services and to borrow the money which they loaned out.

The mere receipt of a dividend is purely incidental or deminimus when these same clerks deposit the check.

The Court: It may be deminimus to you but it
48 may not be in fact. It may be "X" number of dollars but what is it, what is the amount that these people incurred in receiving this income? They didn't put it on their desk when the check came in.

Mr. Bauersfeld: Had to record it and take it to the bank.

The Court: They had to do a little more than that.

I think you have to look at this, that these people were maybe in the business of receiving income.

Mr. Bauersfeld: The tax returns will show that have substantial—

The Court: I am not talking about tax returns. I am talking about facts. Maybe, I don't say they are, they may be in the business of rendering dividends.

Mr. Bauersfeld: We think the Consolidated Title Company Case is applicable which held that the receipt of dividends by a holding company that didn't do anything else—located in the District of Columbia—was not carrying on a trade or business.

The Court: There is another case that we had here.

Mr. Bauersfeld: Our company in addition was engaged in the loaning of money and in the management of these subsidiaries and they had other business and we say dividends was incidental to those other businesses.

The Court: I don't agree with you that it was
49 incidental.

I am not saying that the source of income was within the District of Columbia. I do think the income was very important to the company.

Mr. Bauersfeld: Our next position is that the Petitioner correctly allocated interest on long-term debt expense within and without the District of Columbia depending on the situs of the payee.

The taxpayer in its return allocated expense within and without the District with respect to interest and long-term debt.

The Court: You allocated a source of interest income?

Mr. Bauersfeld: Expense.

The Court: What about the source of income, of interest income?

Mr. Bauersfeld: The interest income we also allocated within and without the District.

The Court: Where do you say the source of interest income is?

Mr. Bauersfeld: It depends upon who pays it.

The Court: It doesn't make any difference who pays it, does it?

Mr. Bauersfeld: Where. If it is paid from a person out of the District then that is not income in the District.
50 It is the situs of the payee.

The Court: The situs of the payee?

Mr. Bauersfeld: With respect to expense.

The Court: First I asked you about the source of the income.

Let's say I loaned some money to a man in Virginia and he owed me some interest and he sends me a check or he may come in the District and pay it to me, where is the source?

Mr. Bauersfeld: The source is Virginia.

The Court: Why wouldn't the expense be down in Virginia?

Mr. Bauersfeld: It may be but the payee under the cases if the Court please, the payee is the one who determines the situs. The payee is the person who determines whether an expense is within or without.

In this connection I think the Virgina Hotel Company—

The Court: The law says that no expense, that any expense connected with income earned outside the District is not deductible. Isn't that what the District Law says?

Mr. Bauersfeld: With respect to income that is not taxable in the District of Columbia.

The Court: Why wouldn't expenses incurred with respect to interest income expense be allocated outside the District?

Mr. Bauersfeld: We reported income partially
51 within and without the District.

The Court: I don't know why they did it.

Mr. Bauersfeld: They did. They reported the income partly within and partly without.

The Court: That may have been a mistake. Go ahead.

Mr. Bauersfeld: That is our case.

With respect to the affirmative answer that was filed by the District of Columbia we say we were not—

The Court: The expense of supervision and so forth, where do you say that was located, where is the situs of that expense?

Mr. Bauersfeld: That isn't involved here. If you are asking a hypothetical question—

The Court: That is not involved here?

Mr. Bauersfeld: No. They did not question the expense of supervision.

The Court: It would be involved if I decided in favor of the District on their plea.

Mr. Bauersfeld: It is possibly it would be then.

The only expense that was questioned by the assessor was the interest expense. In the affirmative answer the District of Columbia—

The Court: Why don't you let them present their side?

Mr. McCally: I prefer not to argue my case orally.
52 The Court: I think you must have some thought on the subject.

Mr. McCally: We do obviously have some thoughts on it.

The Court: You must have had some theory about it. You must have had some reason why you filed a plea.

Mr. McCally: As far as our answer in concerned you mean?

The Court: Yes. I don't know what your theory is. Deciding these cases is not a mechanical thing.

Mr. McCally: If I have to file extensive memoranda I prefer to do that.

The Court: I live with these cases. I wake up in the night and think about it and I don't want one side. I won't insist on it if you don't want to help me out.

Mr. McCally: I don't mind stating what our theory is. We had two. One, that all the income is attributable to the District of Columbia.

The Court: Let me ask you a question in that connection.

You know that General Motors has a company that lends money, General Acceptance. Let's suppose they had an office in the District of Columbia and people went there to borrow money and so forth. Where would you say that business is conducted in the District of Columbia

53 conducted? Where would you say it is conducted?

Mr. McCally: In the District of Columbia.

The Court: Why wouldn't it apply to these subsidiaries why wouldn't the same thing apply to the subsidiaries?

Here is a subsidiary that has an office in Raleigh, North Carolina for instance and people come in and borrow money.

Mr. McCally: I think the important part was carried on here.

The Court: You say the entire business is carried on in the District of Columbia?

Mr. McCally: That is true.

The Court: How can that be when there is an office in Raleigh, North Carolina lending people money and doing the things that banks do?

The Court: We are only talking about Lincoln Service in this case.

The Court: You are taking the business that they are doing.

Mr. McCally: I don't think Lincoln Service is doing any business in Raleigh, North Carolina.

The Court: You said they were.

Mr. McCally: We are taking the position that Lincoln Service—

The Court: What about supervision and so forth?

54 Mr. McCally: Obviously I am going to argue several things. I have taken an alternative position here.

The Court: As I understand your questioning of the witness is that the subsidiaries and Lincoln were one big outfit.

Mr. McCally: No, not necessarily. I have to ask different questions. I think in all fairness that all of this should come out. I think it should all be in the record.

The Court: I misunderstood your questions. As you asked the questions I was very much interested in whether or not we just break aside the corporate veil of this thing and say they are really part of this company. You asked whether the officers were the same and the directors were the same and did they go to the directors' meetings in the District and the bookkeeping was the same. I thought you were leading up to the point—

Mr. McCally: No I don't think I was leading up to that.

The Court: How long do you want to file a memorandum?

Mr. Bauersfeld: Could we have 30 days from the time we get the transcript?

The Court: I am going to give you until the 30th of September to file a brief and Mr. McCally, I am going to give you until the 28th of October.

Thank you gentlemen, the hearing is adjourned.

55 (Whereupon, at 11:40 o'clock a.m., the hearing in the above-entitled cause was adjourned.)

* * * * * * * * * *

58 PROCEEDINGS

The Court: Are you ready to proceed? Are you going to present your evidence first?

Mr. Bauersfeld: Yes. We will call our first witness, then.

Mr. Burnet.

Thornton W. Burnet

took the stand, and being duly sworn, testified as follows:

Direct Examination

By Mr. Bauersfeld:

Q. Mr. Burnet, you previously testified in the original hearing in this case that you were the vice-president and secretary of Lincoln Service Corporation during the years 1958 and the period ending March 16, 1959, and that you were assistant treasurer and the assistant treasurer of the subsidiaries of Lincoln Service Corporation.

To make the record clear, will you please briefly describe for us the business of Lincoln Service Corporation? A. The Lincoln Service Corporation was a holding corporation organized in the State of Delaware. It had offices in Washington, D. C., in the Woodward Building.

Its principal business was the raising of funds through the sale of its capital stocks, debentures, borrowings from banks, institutional lenders. After they secured these funds, they would invest them in their operating
59 subsidiaries either by the purchase of the capital stock of the subsidiary, or by lending money.

In addition, they rendered various service functions to the subsidiaries.

Q. With whom did Lincoln Service carry on any trade or business during 1958 and '59?

The Lincoln Service Corporation—

Mr. McCally: I object to that unless there is some definition as to what trade or business is.

The Court: He just described what a trade or business was.

Mr. McCally: I would still like the objection.

The Court: I will overrule it because he has described what the business was.

The Witness: Would you repeat the question?

By Mr. Bauersfeld:

Q. With whom did Lincoln Service carry on any trade or business during the years '58 and '59? A. Lincoln Service was a holding company and as such had no trade or business with the general public. It did perform various services for its subsidiaries.

Q. What was the trade or business of Lincoln subsidiaries? A. The subsidiaries loaned money under the various Statutes of the States in which they operated.

60 Q. What was the statute generally known as?

A. Either the Small Loan Law or the Consumer Finance Law.

Q. What do you mean by being in the small loan business? A. The small loan business is the lending of money to borrowers. An application for license is made. The license is issued. Under the license in the laws and statutes and rules and regulations of the State you may lend money at various rates as set forth. However, you must lend the money only at the licensed place of business so in any event during this period we have 100 to 105 independent business operating in the various States. Laws would have general rules as to the maximum amount that could be loaned, the rate of interest that could be charged, the maturity operating rules and procedures and rules as to the records which had to be kept.

As a general rule, the rules and regulations of the State would require the keeping of the record at the local office at that the examiners charged with compliance of the law could make their examinations there.

Under this type of statute the subsidiaries loaned money to people living or working in the nearby community.

Q. And who made these examinations you speak
61 of? A. The State.

Q. Will you describe exactly how one of the subsidiaries made a small loan to a borrower? A. A typical example would be an applicant would come to the office and be interviewed by one of the staff managers, the manager or the cashier. Application for credit would be taken. The manager would review this application and credit information from other sources. Once the credit information has been verified, the manager would make a decision as to whether he would make or reject the loan. If he decided to make the loan, the application would be contacted, the terms under which he would make the loan would be explained, a note in all cases would be signed, and if a security were involved, a chattel mortgage or similar agreement would be signed and in turn the receiver would receive a statement of the transaction and proceeds of the loan.

Q. Who made the decision as to whether or not the loan should be made? A. The manager has the sole discretion.

Q. Who determines the amount of the loan, the terms of repayment, and the length of term to the borrower? A. Subject to the State laws, the manager would determine this.

62 Q. Who determines the interest rate? A. The State determines the maximum rate of interest and we always charged the maximum rate.

The Court: You mean the state law?

The Witness: Yes, sir, I am sorry. It would vary from State to State.

By Mr. Bauersfeld:

Q. What papers or documents were used or executed in connection with making the loan? A. There would also be a note, a statement of the transaction, a pass book or record for the borrower to keep of his payments, a chattel mortgage if that was involved, and the application

for credit together with supporting documents for the application such as credit report.

Q. Where were these papers or documents kept? A. Always kept in the local licensed office.

Q. Why was that? A. The law required that.

Q. Now, to be specific, what records were kept in the loan subsidiary's office? A. The note was always kept there, the chattel mortgage or a copy of it, the statement of transaction, and the borrower's pass book were given to the borrower and in addition a ledger card was prepared which maintained a record in the local office, and the original application and credit reports were also kept there.

63 Q. What does the ledger card show? A. The ledger card has the pertinent information, name, address, where he works, but in addition to that it would show the terms of the loan, the amount he had applied for, a record of his payments, and on the reverse side the collection efforts that had been made. In other words, it would determine the exact status of the account at any one time.

Q. What records did the subsidiaries maintain in the District of Columbia? A. None.

Q. Where were its books maintained? A. The books and the general ledger were maintained by the Lincoln Service Corporation.

The Court: Wait a minute. You were asked what records were kept in the District of Columbia.

Mr. Bauersfeld: By the subsidiaries.

The Court: He said no.

Mr. Bauersfeld: That is right.

The next question is where were the books maintained.

The Court: He said in the District of Columbia.

The Witness: By Lincoln Service Corporation. The subsidiary did not maintain in the District of Columbia itself, but the Lincoln Service maintained for the

64 subsidiary in the District as a part of its management fee.

The Court: That is what he means when he says they are not kept in the District, the Lincoln Service did it for them.

Mr. Bauersfeld: That is right.

By Mr. Bauersfeld:

Q. That is right, is it not, Mr. Witness? A. That is correct.

The Court: You mean—all right, I guess I understand it. Go ahead.

By Mr. Bauersfeld:

Q. What individual record of loans made to borrowers from the subsidiary was kept by Lincoln Service Corporation? A. Lincoln Service Corporation kept no individual record of the borrower.

Q. How did borrowers, the loan subsidiaries, repay their loans? A. Loans were repaid monthly either in check through the mail, or in person at the local office.

Q. You said at the local office? A. At the subsidiary office.

Q. When payment is made by a borrower, what entries were made by the subsidiary? A. When payment
65 was made the law required the interest if it was—well, the payment—

The Court: He didn't ask you what the law is.

The Witness: I am sorry.

The Court: Just answer the question he asked you.

The Witness: An entry was made on the entry card which would show the interest, principle, and the new balance.

By Mr. Bauersfeld:

Q. And where was that entry made? A. on the ledger card at the subsidiary office.

Q. When a borrower would not pay on time, what procedure was followed by the subsidiaries? A. The manager

would make a decision as to whether he would write, phone, or have someone visit the man.

Q. What did Lincoln Service Corporation's employees in the District of Columbia do with respect to the making and collection of loans of subsidiaries? A. Nothing.

Q. Now, were any two offices of these local subsidiaries exactly the same? A. No, sir.

Q. By that, you mean they were not exactly run the same?

Mr. McCally: I object. I think he just asked the witness the question. It calls for a yes or no answer.

The Court: Your objection is that he is leading
66 the witness?

Mr. McCally: Yes, your Honor.

The Court: I think your objection is well taken. I will strike the question.

By Mr. Bauersfeld:

Q. What did the supervisor of Lincoln do with respect to the making and collection of loans? A. With respect to the making of the loan, nothing. With respect to the collection of the loan, they could offer advice.

The Court: Do what?

The Witness: Offer advice and suggest procedures to follow.

By Mr. Bauersfeld:

Q. How did Lincoln control this operation of its subsidiaries? A. They had no direct control. We would review the reports, the accounting reports, that would come in and if we felt that an office was not doing what it should do, we could send a supervisor down to correct the procedure. Corrective measures would be either new personnel or discontinue the office.

Q. Why did Lincoln Service Corporation maintain general ledgers in journal for each of the subsidiaries
67 in the District of Columbia? A. This was an accounting service that we performed for them. We

felt we were more qualified to perform it than the subsidiary.

Q. What information was sent to Lincoln Service Corporation in the District of Columbia by the subsidiaries? A. We would receive daily an accounting report from the subsidiaries.

The Court: Well, that doesn't answer the question. He wants to know what procedure it was.

The Witness: The daily accounting report would contain a record of the loans made that day, the collections made, any other income that would be received, and a record of the expenses that were paid.

In addition to this they would have some other statistical information such as the loan balance and the status.

The Court: That is what you wanted, isn't it?

Mr. Bauersfeld: Yes, sir.

By Mr. Bauersfeld:

Q. What bank accounts did the subsidiaries have? A. The subsidiaries maintained a bank account in the city in which they were located.

Q. And who had authority to draw on the subsidiary's bank account? A. The manager and cashier in the
68 office of the subsidiary.

Q. Who actually in your experience executed the checks on the subsidiary's bank account? A. The manager and the cashier.

Q. Could Lincoln Service Corporation draw a check upon the bank account of the subsidiary? A. No.

Q. On the average, how many employees did each of the subsidiaries have during the year 1958 and the period ending March 16, 1959? A. Three to four.

Q. What was the title and duties of these various employees of the subsidiaries? A. In the larger office we would have a manager, an assistant manager, a cashier, assistant cashiers or clerks, and outside men, field representatives.

Q. And in the smaller offices? A. In the smaller offices might be just the manager and cashier.

Q. How were the employees of the subsidiaries paid? A. They were paid by the manager on the checks drawn on the local bank.

Q. Who had authority to hire and fire employees of the subsidiaries? A. The manager had the authority to
69 hire and fire any of his people. The supervisor had the authority to hire and fire the manager.

What was the total number of employees of the subsidiaries of Lincoln Service Corporation during the fiscal year 1958 and for the period ending March 16, 1959? A. Approximately 350.

Q. And how many employees did Lincoln Service have during the same period? A. About twenty.

Q. How many employees of the subsidiaries worked outside the District of Columbia? A. All the employees of the subsidiaries worked outside the District of Columbia.

Q. How many employees of the subsidiaries worked in the District of Columbia? A. None.

Q. Who paid the expenses of the subsidiary for rent, lights, etc.? A. These were paid by the subsidiary. The manager would draw the appropriate checks.

Q. From what bank account? A. From the local bank account.

Q. Did the subsidiaries own or rent office space? A. They rented office space.

Q. And in whose name was the office space rented?
70 A. In the subsidiary's name.

Q. Will you describe how many stockholders' meetings were held by each subsidiary per year? A. One as a general rule.

Q. And will you describe how many directors' meetings were held by each subsidiary each year? A. One, again as a general rule.

Q. Will you describe in general how these meetings were held? A. Generally we would have a date on which eight

to ten corporations would hold their meeting. The meeting would be called at a fixed time, the stockholders would show up, we would go through one meeting and it was then agreed upon that the others would follow the same pattern, so we really held a pilot meeting and then the others would be just perfunctory and we said we held them.

Mr. Bauersfeld: I ask that this be marked for identification as Petitioner's Exhibit No. 3.

(Petitioner's Exhibit No. 3, Witness Burnet, was marked for identification.)

By Mr. Bauersfeld:

Q. Mr. Burnet, I hand you Petitioner's Exhibit No. 3 for identification and ask you if you can identify it. A. These are copies of the annual meetings of the stockholders of some of the subsidiaries of the Lincoln Service
71 Corporation.

They are also copies of the annual meeting of the Board of Directors of some of the subsidiaries of the Lincoln subsidiary.

Q. On what dates? A. These were held—all were held on May 5, 1958.

Mr. Bauersfeld: I would like to introduce it into evidence.

Mr. McCally: No objection.

The Court: It will be received in evidence as Petitioner's Exhibit No. 3.

(Petitioner's Exhibit No. 3, Witness Burnet, was received in evidence.)

By Mr. Bauersfeld:

Q. How long would a stockholders' meeting take? A. The first one would take five or six minutes and the others would taken one or two minutes, all the rest of them.

Q. How long would the directors' meeting last? A. Again, about the same. The first directors' meeting would

last five or six minutes and the others would take about two minutes.

Q. Did the subsidiaries hold any formal meetings of the officers of the District of Columbia within the period
72 1958 and the period ended March 16, 1959? A. No.

Q. How did the officers of the various subsidiaries perform their duties, the duties of their office? A. The primary duty was the signing of the necessary reports. The other service functions were performed by the Lincoln Service Corporation.

Q. These reports were to whom? A. By various reports to the State officials, Federal, tax returns, this type.

Q. What compensation was paid to the officers of the various subsidiaries? A. They received no compensation as officers of the subsidiaries.

Q. Why didn't the officers of the subsidiaries receive any salary? A. It was felt they performed no function which would justify the salary.

Q. During 1958 and the period ended March 16, 1959, what were the officers of the subsidiaries doing to carry out the performance of their duties? A. Just signing the reports.

Q. Was there any particular reason why Lincoln Service Corporation is located in the District of Columbia? A. No, it could have been located anywhere in the East.

Q. Was Lincoln Service Corporation paid for the
73 office—

The Court: Now you are getting to your leading questions again. It is very simple to find out what was paid. Ask him what was paid, if anything.

By Mr. Bauersfeld:

Q. What was Lincoln's—what compensation or payment was received by Lincoln Service Corporation? A. Lincoln Service Corporation receive an administration or management fee which compensated it for the services it performed.

It also received interest income on the money it loaned to them.

And it also received dividends as they were declared.

Q. Was any part of the management fee it received payment for disguised interest? A. No, sir.

Q. Were dividends it received from some of the subsidiaries a part of the administration or management fee? A. No, sir.

Q. Did the loans subsidiary pay taxes during the year 1958 and the period ended March 16, 1959? A. Yes. They would pay taxes again depending on the profits, Federal, State, local taxes.

74 Q. Did they pay any property taxes? A. Not that I recall, sir.

Q. To whom did the loan subsidiaries pay these taxes that you have mentioned?

Mr. McCally: I am going to object to this unless he specifies what subsidiary he is talking about. I think the general question did they pay taxes isn't helpful. I assume they did.

The Court: He is talking about all of them. I assume that means every one of them.

Mr. Bauersfeld: He said the ones that had a profit.

The Court: You asked him if they pay any property tax.

Mr. Bauersfeld: He couldn't answer the property tax.

The Court: He said he didn't know.

Mr. Bauersfeld: That is right.

The Court: I assume you are asking about all of them.

Mr. Bauersfeld: That is right.

Mr. McCally: I understood him to say the ones that made a profit.

The Witness: The ones who made a profit pay Federal income tax, State income tax, and also city tax.

There would be other taxes that did not depend on

75 a profit. They would pay these, license taxes—

Mr. McCally: The next question he answered generally. Then he started into it again.

The Court: Will you read the question?

(Question read.)

The Court: What is the answer?

Mr. McCally: I objected at that point. He didn't answer. I wanted to know to whom he paid them generally speaking. I think if he is going to discuss how the taxes were paid, we should know what the subsidiary is.

The Court: You don't want to go into every subsidiary?

Mr. McCally: No, but I am precluded if I don't know which ones he is talking about.

The Court: Ask which ones.

Mr. McCally: Yes, your Honor.

The Court: He is generally stating that taxes were paid to the Federal Government, to the State, and the cities.

All right.

By Mr. Bauersfeld:

Q. What control did Lincoln Service Corporation exercise over the subsidiary loan corporations? A. Lincoln
76 Service Corporation did not exercise any direct control. If we felt by the reports that office was in trouble a supervisor would be sent down to make an investigation. Such supervisor had the authority to change the personnel if he felt it was necessary to have corrective action. If we felt it could not be corrected, we would close the office.

Q. Did any of the subsidiaries rent office space in the District of Columbia? A. No, sir.

Mr. Bauersfeld: You may inquire.

Cross Examination

By Mr. McCally:

Q. Mr. Burnet, did Lincoln Service Corporation lay down any general guide lines by which small loans were to be made by the various subsidiaries? A. The Lincoln Service Corporation had a general outline of procedures to be fol-

lowed in the making of a loan, and they would point out the factors that should be taken into consideration when the manager exercised his judgment in making a loan.

Q. But he had to exercise his judgment within those guide lines, is that correct? A. No.

Q. What would happen if he continually went out-
77 side these guide lines and made good? A. If his loans proved to be good, a—

The Court: What happened if he went out beyond the guide lines?

The Witness: I am sorry, but it would depend on what happened after he went out. If the loans were still collected, nothing, because his judgment would have been correct, but if the loans had turned out to be bad loans, the supervisor would point out to him in what areas he made his mistake and tell him to correct it in the future.

By Mr. McCally:

Q. Weren't these managers generally expected to keep within those guide lines, however? A. What do you mean by guide lines?

Q. I assume that Lincoln Service had certain policies which governed the making of a loan. You set up certain criteria which the subsidiary would have to follow. It couldn't lend to anybody? A. Yes, sir. If they had the income and the ability to pay, they would lend to anyone.

Q. That was within those guide lines, was it not? A. Do you think this man has the ability to pay would be the only guide line.

Q. Could you describe what these guide lines were in detail?

The Court: He asked what you mean by guide lines.

78 By Mr. McCally:

Q. Would you describe for me the policies set up by Lincoln Service in making a loan? A. If I may at this point, there are two definitions of a making of a loan. One

definition would be the technical aspect; that is, the all unfilled portions of a note must be filled out before the borrower signs. In this type of making a loan we did have very definite rules and it was required by law that we make the loan in this particular way.

When it comes down to the judgment that was exercised our supervisor I would call them teachers and they try to point out to the managers the factors that have to be taken into consideration. There is no formula that I can think of that points out this loan should be made and this one should be rejected.

Q. There is nothing in writing? A. There is a manual that would point it out. I can't recall in what detail it would, but he would point out how to investigate the credit. You do take into consideration the man's income; you do take into consideration his expenses; you do take into consideration the credit reputation he has built up.

The Court: Who is that manual by?

The Witness: By the Lincoln Service Corporation.

The Court: And sent to each manager?

79 The Witness: Yes, sir.

By Mr. McCally:

Q. Now, Mr. Burnet, if I recall your testimony correctly, you testified that the actual loan records for an individual borrower are all kept within the subsidiary? A. That is correct. None of the records that pertain to the individual borrower were sent to the Lincoln Service Corporation.

Q. Can you tell me what records were sent to the Lincoln Service Corporation? A. The daily accounting record was sent on a daily basis to them.

At the end of the month there might be others such as a delinquency summary which would show the total amount of delinquency.

The Court: Let me ask you this, what did that daily report show?

The Witness: If I can recall correctly, Section 1 showed the loans that were made for that day.

The Court: The name?

The Witness: The name, the address, the terms of the loan would be shown, and the amount of money that had been loaned.

Section 2 would record the interest income, the principle income, any income that might be received from
80 AP&L or account that had been charged.

Section 3 would show the expense of that particular office, all the money that had been paid out, the total amount of the loans, the salaries that they had been paid that day, the rent, all expenses.

At the bottom there we balanced out the cash, we showed the opening cash and the closing cash.

The Court: Did it show how much money he had in the bank?

The Witness: Yes, sir, how much on hand in the office and how much was in the bank.

The Court: That was done every day?

The Witness: Every day on a daily basis, every working day.

The Court: Go ahead.

By Mr. McCally:

Q. Mr. Burnet, you stated that the pay checks for the individual employees of the subsidiaries were drawn in the locale where the subsidiary was. A. That is correct.

Q. Was this check signed by the manager? A. By the manager and cashier.

Q. Did it require any counter signature by anybody from Lincoln Service? A. No, sir.

81 Q. Now, I think you described the stockholders' meetings of the various subsidiaries. Where were they held? A. In the Woodward Building, Washington, D. C.

Q. In the District of Columbia? A. Yes.

Q. Were all the stockholders' meetings held there? A. In the period in question I think the answer is yes to the best of my knowledge.

Q. What about the directors' meetings? A. They were held following the stockholders' meetings in the same place.

Q. Pretty much pro forma? A. Yes, sir.

Q. Mr. Bauersfeld asked you about any other formal meetings. What is your definition of a formal meeting? A directors' or stockholders' meeting, is that what you are talking about? A. In that type of meeting they would be called specifically for a purpose. You would have advance notice to a meeting that it would be held on a certain subject.

Q. Who were the supervisors employed by you to look over the reports of the subsidiaries? A. They were employed by the Lincoln Service Corporation.

82 Q. The actual office space of the subsidiaries that was used in the various jurisdictions, who signed the lease for the office space? A. The officers of the subsidiary.

Q. And were these same officers also officers of the Lincoln Service Corporation? A. Not in all cases. There was one officer of subsidiary who was not an officer—I can't answer you, but generally speaking, yes.

Q. They were officers of Lincoln Service Corporation? A. In most cases, yes.

Q. They signed the necessary leases? A. Yes.

Q. The lease, however, was in the subsidiary? A. That is correct.

Q. Were the managers paid by the subsidiaries from funds in the field? A. Yes.

Q. And they were drawn on the subsidiary accounts, is that correct? A. Yes.

Q. Now, the money that Lincoln Service Corporation loaned to the subsidiaries, who determined the rate that went with that loan? A. You are talking now of the

83 Lincoln Service Corporation to the subsidiary?

Q. Yes. A. That was determined by the Lincoln Service Corporation.

Q. Now, I believe in answer to one of the questions you stated that you felt that personnel of Lincoln Service Cor-

poration was more qualified to keep the accounting record of the subsidiaries. A. Yes.

Q. Will you tell me why you think that? A. They were trained personnel.

Q. Did the subsidiaries themselves in fact have anybody who could have kept those records in the detail they were kept? A. They may have, but they were not hired to be accountants, they were hired to be loan people.

Q. Now, Mr. Burnet, on this Petitioner's Exhibit No. 3, there are certain names. Who is Mr. Charles Delmar? A. Chairman of the Board of the Lincoln Service Corporation.

Q. What position did he hold with the subsidiaries? A. He was president of the subsidiaries.

Q. How about Ralph G. Blasey? A. President of the Lincoln Service Corporation. He was vice-president of subsidiaries.

84 Q. Oscar C. Mitchell? A. I feel confident he was treasurer to both subsidiaries and Lincoln Service Corporation.

Q. Raymond E. Murphy? A. A director of the Lincoln Service Corporation.

Q. Did he hold any position with the subsidiaries? A. He may have been a director on some of the subsidiaries.

Q. How about Walter R. Tuckerman? A. Also a director of the Lincoln Service Corporation and a director in some of the subsidiaries.

Q. How about Jack C. Guynn? A. An officer of the Lincoln Service Corporation; an officer of the subsidiaries.

Mr. McCally: I have no further questions, your Honor.

The Court: What did the director of the subsidiary do, what did he have to do?

The Witness: Maintain reports.

The Court: Did he have anything to do with the money of the subsidiary?

The Witness: No.

The Court: He couldn't draw checks on it?

The Witness: He could, but he didn't.

85 The Court: Do I understand that the money deposited in these banks was subject to withdrawal by the treasurer?

The Witness: It was subject to withdrawal by—I can't recall precisely what officers. There were officers authorized to draw checks on the subsidiary, but the officers of the subsidiaries to my knowledge practically never drew any checks on the subsidiary.

The Court: How were the dividends paid?

The Witness: Out of the headquarters office.

The Court: Who drew the check?

The Witness: The treasurer drew the check.

The Court: You just said the treasurer didn't draw the checks.

The Witness: He drew the check on the Lincoln bank.

The Court: How was the dividend paid from the subsidiary?

The Witness: The dividend was paid by the drawing of a check on a bank account which was located in the District of Columbia.

The Court: In whose name?

The Witness: It was in—we picked an account which really had no name. All subsidiaries drew out of that bank account. The name of the corporation would be indicated on it.

86 The Court: Where did the money come from?

The Witness: Lincoln Service Corporation would put the necessary money in. It would be reimbursed by a bill to the local subsidiary and that manager would then reimburse us.

The Court: By check?

The Witness: By check which the manager would draw.

The Court: Who paid the administration?

The Witness: The manager did.

The Court: How often did he pay?

The Witness: Once a month.

The Court: He would send a check from the local bank?

The Witness: Yes, sir.

The Court: Not the treasurer?

The Witness: Not the treasurer, no, sir.

The Court: How about interest?

The Witness: We would send a bill to the subsidiary. In with this bill would be other items, but the interest would be in there. The manager would draw a check.

The Court: Do you have any of those bills?

The Witness: I don't have any with me. I suppose they would be available.

The Court: You don't know where those records
87 are?

The Witness: I don't know what records were saved from the Lincoln Service Corporation. I don't know whether they are available or not.

The Court: When did you determine to collect from the local company?

The Witness: Once a month the administration fees would be paid and once a month they would pay us the interest.

The Court: Would anyone down in a company in Georgia, did it determine what the dividends were going to be?

The Witness: No.

The Court: Who determined it?

The Witness: The officers of the subsidiary.

The Court: A man in Georgia had nothing to do with it?

The Witness: Not the subsidiaries, no.

The Court: Everything was determined here as far as dividends?

The Witness: As far as dividends.

The Court: How about the amount paid for services?

The Witness: Would be under a formula. As I recall, it was one half of one percent of the loan balance.

The Court: Who determined that?

88 The Witness: This would be determined by Mr. Delmar.

The Court: Didn't the local manager have anything to say about it?

The Witness: This was a function of the officers of the corporation.

The Court: All policies of that kind would be determined by the officers of the corporation?

The Witness: Be determined primarily by Mr. Delmar.

The Court: Mr. Delmar or officers of the company?

The Witness: And officers of the Lincoln Service Corporation.

The Court: When that amount was determined, who did Mr. Delmar act for, the Lincoln Service Corporation or the subsidiary?

The Witness: I can't answer that question, sir, how he determined which hat he wore when he made a decision, whether he was wearing a hat of the chairman or Lincoln Service Corporation or the president of the subsidiary; I don't know.

The Court: Is that true of all policies?

The Witness: Policies which would affect both Lincoln Service Corporation and the subsidiary of this nature.

The Court: Is it true that in respect of loans,
89 of determination other than the amount of loans that were made, and collections, and other things, everything was done by the officer here in Washington?

The Witness: No, sir.

The Court: What was done down in the local?

The Witness: The local office.

The Court: As far as policies are concerned, other than lending money and determining whether the lender was creditable or whether he could pay the loan or not. Tell me what.

The Witness: I am not sure what you mean by the word "policy".

The Court: Modus operandi, if you want to be classical.

The Witness: The method in that would be determined primarily by the law in which he was operating.

The Court: I am not talking about the matter of interest, I am talking about the business of lending money to the borrower.

Now, that was done by the local man?

The Witness: That is correct.

The Court: That was a policy, that was a modus, that was something that was done.

Now, beside that, what was done by the local man?

The Witness: The collection was his responsibility.

90 The Court: He is in the business of lending money.

The Witness: Payment of all bills was his responsibility. Policy such as the dividends were determined by the directors, or other policies of that nature were determined either by the directors or the officers.

The Court: What was done for the services that you charged?

The Witness: We performed Lincoln Service Corporation set service primarily accounting services, advertising, centralized purchasing; this type of service was performed.

The Court: How about bookkeeping?

The Witness: Bookkeeping, accounting, preparation of some of the tax forms, outside auditors prepared most of our tax forms, but they were hired by the Lincoln Service Corporation. We performed numerous service functions of this nature.

The Court: I see. All right.

Any more questions?

Mr. Bauersfeld: One more question.

Redirect Examination

By Mr. Bauersfeld:

Q. Is this a fair example of the way the stockholders' and directors' meetings were held by all the subsidiaries?

A. Yes, it is. It may not show here, but we mimeo-

91 graphed them and just filled them in. They all fell into the same pattern.

Mr. Bauersfeld: No further questions.
Mr. McCally: I have one question, your Honor.

Recross Examination

By Mr. McCally:

Q. Where it lists the names of Charles Delmar, Ralph G. Blasey, Oscar C. Mitchell, and Raymond E. Murphy, are these people all located in the District of Columbia? A. Mr. Delmar worked and resided here. Mr. Blasey worked in Maryland and worked in the District. Mr. Mitchell lived in the District. Mr. Murphy, I don't know where he lived. I think he worked for the State Department in the District, but I do not know.

Q. Is it a fair statement to say that the principal office of Lincoln Service Corporation was in the District of Columbia? A. Of the Lincoln Service Corporation, yes, sir.

Q. And all of these officers and directors actually did their work for the subsidiaries in the District of Columbia generally speaking, did they not? A. Generally speaking.

Mr. McCally: I have no further questions.

The Court: As I understand it, none of the subsidiaries had any bank accounts in the District of
92 Columbia?

The Witness: With the one sole exception, which I wouldn't call their bank account, would be this dividend account.

The Court: O.K. All right.

Mr. Bauersfeld: No further questions, your Honor.

The Court: You may be excused.

(Witness excused.)

Mr. Bauersfeld: Mr. Ceravalo.

Frank Ceravalo

took the stand, and being duly sworn, testified as follows:

The Court: Please be seated, and state your name for the record.

The Witness: Frank Ceravalo, Route 1, Charles Town, West Virginia.

Direct Examination

By Mr. Bauersfeld:

Q. What is your business, Mr. Ceravalo? A. I am manager of the American Finance Corporation in Martinsburg, West Virginia.

Q. Now, during the years 1958 and 1959, what was your business? A. I was manager of the Charles Town Finance Company, Inc., in Charles Town, West Virginia.

Q. Who was the stockholder of Charles Town
93 Finance Corporation? A. Lincoln Service Corporation.

Q. What was the business of the Charles Town Finance Company, Inc.? A. We were in the business of making small loans.

Q. Now, as the manager of the Charles Town Finance Company, will you please describe how the business was operated? A. Well, I as manager had the responsibility of making loans and of course we made loans and collected them and always staying within the State laws.

The Court: What do you mean by State laws, with respect to interest?

The Witness: With respect to interest and maximum time of contract, sir.

By Mr. Bauersfeld:

Q. Where were the loans actually completed? A. They were completed in the Charles Town office.

Q. How many people were employed in the Charles Town office during 1958 and '59? A. Three persons, sir.

Q. What did each of these employees do? A. Well, as I said before, I as manager was in charge of approving and making loans and was also in charge of supervising em-

ployees underneath me.

94 Then there was a lady cashier there who was in charge of making payments and doing minor secretarial work.

And then we had an outside field representative in charge of making personal calls.

Q. From whom were the employees of the Charles Town office paid; from where? A. They were paid out of the local office on a check drawn from the Bank of Charles Town in Charles Town, West Virginia.

Q. Who had authority to draw on the Bank of Charles Town? A. I as manager. It was a joint proposition. It required two signatures, myself and the cashier, and I believe some officer of Lincoln Service Corportion had the authority.

The Court: I didn't hear the last part.

The Witness: I said I believe some officer in Lincoln Service Corporation also had authority to sign checks.

By Mr. Bauersfeld:

Q. Who had authority to hire and fire employees? A. I as manager had the authority to hire and fire employees under myself.

Q. Did any officer of Lincoln Service Corporation sign any checks on the Charles Town Bank account to

95 your knowledge? A. None to my knowledge, sir.

Q. Did any officer of Charles Town Finance Company in Washington sign any checks in the bank account? A. There again, none to my knowledge.

Q. Are you sure who had authority in Washington to sign the checks? A. No, sir.

Q. But you believe that it was Lincoln Service Corporation officer? A. As far as I knew, yes, sir.

Q. Who had authority to approve loans? A. I as manager had that authority.

Q. What checks were drawn on the Charles Town Finance Company bank account? A. We paid normal office bills

such as local telephone bills, rent, paid local taxes and State taxes, and of course paid the employees.

Q. And when you say "we", who do you mean? A. I as manager had the authority to sign checks. It required two signatures. The cashier also signed the checks.

Q. Did any of the borrowers receive checks? A. We also paid loans or paid customers that requested a check to be paid by check.

96 Q. Who determined the amount of the loan, the term of repayment, and the length of the term of the loan to a borrower? A. I determined that depending on, of course, staying within the limitation set by the State Banking Department of the State laws.

Q. Who determined the interest rate? A. That was determined by the State of West Virginia Department of Banks.

Q. What did the State of West Virginia Banking Department have to do with the operation of your company? A. Well, as I said, they set forth the interest rates to be charged and the maximum term of contract in general.

Q. Did they ever examine the records? A. Yes, sir, they examined the records at least once a year.

Q. What occurred if upon examination of the records the State determined it wasn't being operated in accordance with State law?

Mr. McCally: Objection.

The Court: How can he answer that unless something actually happended? If something happened, that is all right, but what would happen, I don't think he could answer that.

By Mr. Bauersfeld:

97 Q. What happened after an examination by the State banking examiners in your office? A. He would of course return to his home office and submit a report stating the office operations were found staying within the limitation of the State laws, or if there were any offenses, he would of course note those.

Q. What papers or documents were used or executed in connection with making a loan? A. There were the deed of trust, the note, the application, credit report, and then a statement of the transaction and a receipt book, and a ledger card, of course.

Q. Where were these papers or documents kept? A. All of these were kept in the office itself except for the receipt book and that was given to the customer.

Q. Why were these papers kept in the Charles Town office? A. Well, for two reasons. One, we needed it in order to carry on our operations; and second, it is required by the State law.

Q. What is shown on a ledger card? A. Well, I had to record the name and address, employment, amount of contract, the date of the loan, and payments as they were received.

Q. What information was furnished to Lincoln
98 Service Corporation? A. As I recall, it was an accounting activity report that we had to make up and submit each day.

Q. How did borrowers repay their loans? A. It was paid on a monthly basis either by mail or in the office.

Q. What entries were made when a borrower made a repayment? A. We would record on the receipt book and the ledger card the date, the amount of payment, the interest, and of course the present balance.

Q. Were all loans always paid on time? A. No, sir.

Q. When a borrower didn't pay on time, what did you do? A. Well, it depended on the seriousness of the delinquency. We would either use a notice or telephone contact at his residence or sometimes we had to employ the outside man or outside representative to call at his home.

Q. Who determined what course to pursue for collection? A. This was determined by the manager.

Q. Where was your Charles Town office located? A. It was located on East Washington Street in Charles Town,

West Virginia.

99 Q. Was the office owned or rented by Charles Town Finance Company? A. It was rented.

Q. Did you have anything to do in connection with the renewal of the lease? A. No, sir—well, yes, renewals, yes, sir.

The Court: What did you have to do with it?

The Witness: I had to have the landlord sign the necessary lease and then submit it to Lincoln Service Corporation for their signature, and of course if there was any increases in rentals or so forth I had to negotiate for Lincoln Service Corporation.

The Court: You couldn't determine what rent to pay?

The Witness: The rent to be charged?

The Court: Yes.

The Witness: No, sir.

The Court: Why did you take it up with Lincoln Service Corporation?

The Witness: Well, as a matter of policy, I suppose, sir. As I recall, there was only one renewal and I don't think we changed the amount of rent in that particular case.

The Court: You didn't sign the lease?

The Witness: No, your Honor.

By Mr. Bauersfeld:

100 Q. In whose name was the property rented? A. It was rented in the name of Charles Town Finance Corporation.

Q. Did Charles Town Finance Corporation have any personal property? A. Yes, sir, they had such things as office furniture and fixtures, typewriters and adding machines.

Q. Where was that located? A. It was located in the Charles Town office.

Q. Were you supervised in the operation of the Charles Town Finance Company? A. Yes, sir.

Q. Will you explain how? A. Well, on occasion about once or twice every six months a supervisor would come

in the office, check our records to see that we were staying within the State laws, and of course make helpful suggestions in making loans and collecting them.

Q. And who was your supervisor during 1958 and 1959? A. As I recall, Mr. Williamson.

Q. Where was his office located? A. In Beckley, West Virginia.

Q. As manager of the Charles Town Finance Company, how often did you come to Washington in connection
101 with the business? A. I never had the occasion.

Q. Where did your borrowers come from? A. From within about a fifteen to twenty mile radius of Charles Town.

Q. Were any books maintained in the office of the Charles Town Finance Company? A. Yes, sir. We maintain a ledger.

Q. Did the Charles Town Finance Company, Inc., belong to any civic and trade associations? A. Yes, sir. We belonged to the Chamber of Commerce and the Credit Bureau.

Q. Chamber of Commerce where? A. In Charles Town, West Virginia.

Q. Who participated in these associations for the Charles Town Finance Company? A. I as manager.

Q. Now, where did the Charles Town Finance Company get money for operations? A. We submitted a request to Lincoln Service Corporation and they sent us a check in the amount that we requested to our office and then we would deposit it in our local bank.

Q. Who made the decision as to when Charles Town Finance Company needed money? A. I as manager made that decision.

Q. Who made the decision as to the amount of
102 money that could be requested? A. There again, I would do that, too.

Q. Did Charles Town Finance Company have any offices except in Charles Town, West Virginia? A. No, sir.

Q. You have testified that the Charles Town Finance Company made small loans to customers located within a radius of fifteen or twenty miles of Charles Town, West Virginia. Did the Charles Town Finance Company engage in any other business? A. No, sir.

Mr. Bauersfeld: You may inquire.

Cross Examination

By Mr. McCally:

Q. You testified that local taxes were paid by your office. A. Yes, sir.

Q. In the payment of these taxes, was it necessary to secure the approval of Lincoln Service Corporation before the taxes were paid? A. As I recall, no, I don't think so.

Q. Bills sent directly to you? A. Yes, sir.

Q. You just automatically paid them? A. Right, in order to get the benefit of the discount.

103 Q. I didn't hear you. A. I said in order to get the benefit of the discount in the case of personal property taxes.

Q. A copy of them submitted to Lincoln Service Corporation? A. I really don't know.

The Court: What kind of taxes were they, not income taxes?

The Witness: No, sir, personal property taxes to the Court House there as I recall.

The Court: All right.

By Mr. McCally:

Q. Do you know who established the bank account that you wrote your checks on? A. No, I wasn't there at the time that was originally established.

Q. Where did you come from before you became manager? Did you work prior to that at another office. A. This was my first managing job. I originally worked out of Martinsburg office as a field representative.

Q. Who hired you? A. Mr. Stickels, the manager of the office in Martinsburg.

Q. Where? A. The manager of the office in
104 Martinsburg, West Virginia.

Q. Do you know who your immediate supervisor was employed by? A. No, sir, I don't.

The Court: Who hired you as far as the West Virginia office?

The Witness: Mr. Stickels, the manager of the office in Martinsburg hired me.

The Court: For the Charles Town?

The Witness: You mean transferred me or transferred me to the Charles Town office?

The Court: Yes. Who hired you?

The Witness: As I recall, I think I was originally transferred by Mr. Kratz.

The Court: Who is he?

The Witness: Supervisor at the time.

The Court: All right.

By Mr. McCally:

Q. Were there any liimts put on the amount of money that you requested from Lincoln? A. None that I recall, no.

Q. When you made one of these requests, was there usually any discussion following a request or was it just automatically granted? A. I never had any complaints.

105 Q. You made the request and you would be sent the money by Lincoln, is that correct? A. Right, sir.

Q. What interest rate did you charge on these small loans that you made? A. At that time it was three and a half percent for the first $150 per month, and two and a half percent for the second $150 up to $300, and of course on the remaining balance it would decrease as the amounts decreased.

Q. Do you know what interest rate was paid by your subsidiary to Lincoln Service? A. No, sir, I don't.

The Court: Didn't you inquire?

The Witness: I believe at the time I probably knew, and I think it was something—I don't really know.

The Court: Weren't you interested in knowing?

The Witness: Yes. As manager I was and I probably would have gotten the interest. I may have known, but I have forgotten in these five or six years.

The Court: Did you have anything to do with the determining of this?

The Witness: No, sir, I didn't have anything to do with negotiating this.

The Court: Why not? You were manager down there, weren't you interested in getting a fair interest?

106 The Witness: I had confidence in the service itself.

The Court: Didn't you have any discretion as to whether or not you would pay the interest or what amount of interest?

The Witness: If there was an error—

The Court: I don't mean error, I mean amount.

The Witness: No, sir, I don't think I would have.

By Mr. McCally:

Q. Who did you consider to be your immediate superior? A. During the period in question?

Q. Yes. A. At that time Mr. Williamson was my supervisor.

Q. Do you know who he was employed by? A. I don't know. I assume Lincoln Service Corporation.

Q. Mr. Ceravalo, you testified that you thought somebody in Lincoln Service Corporation had authority to sign these checks. Do you know that to be a fact? A. Yes, sir, because if I was absent as manager or on vacation or what have you, the checking account requires two signatures.

Q. Who signed it when you were absent ? A. I don't recall. I think one of the officers. I am not sure whether it was Mr. Mitchell, or—

107 Q. You say one of the officers of who? A. Of Lincoln Service Corporation; but there again, this is kind of vague.

Q. Are you certain of that, sir, or are you just surmising? A. I am not certain which one, but I am certain one of the officers did sign. I have forgotten in the last five or six years.

Q. There were loans made when you were on vacation? A. Yes, sir.

Q. How much vacation did you normally get each year? A. Two weeks.

Q. When you came back, did you have any occasion to examine the loans made while you were on vacation? A. Yes, sir.

Q. Could you tell from those records who had signed the checks? A. Well, at that time most of the time they had an acting manager who would come in from one of the other offices, of course, and if there was a time element involved there they would get authority for him to sign checks, so normally this is what was done.

As far as any officer, I don't recall any officer signing these checks.

Q. That is what I want to get down to. This is a very crucial matter. I don't want you guessing here if
108 you don't know. A. I don't know in a particular case. During the vacation normally it was the acting manager who signed along with the cashier, as I recall.

Q. Do you know of any instance when an officer of Lincoln Service Corporation signed one of those checks? A. No, not that I recall.

Q. You were just assuming, I gather, that they did have the authority to sign these when you were away? A. Right; in case of an emergency that came up, right.

The Court: I think we will take a little recess now.

(Recess taken.)

The Court: Have you finished your cross examination?

Mr. McCally: I have one more question.

By Mr. McCally:

Q. When you reecived your pay check, was that signed by you and the cashier? A. We made up the check itself.

Q. Who signed it? A. It was signed by myself and the cashier.

Q. That was the only authority you needed to receive your own pay check, is that correct? A. Yes, sir.

109 Q. These checks that you made that you gave to your individual borrowers, you made a small loan, I assume you gave them a check, is that correct, or did you give them cash? A. Not in all cases. If the borrower requested a check or if in the case of paying bills he requested that these bills be paid by check, we would write out a chcek in the amount itself.

Q. Did these checks come back to you? Did they come to your office? A. Yes, sir.

Q. Did you review these checks? A. Yes, sir. Once a month we reconciled the checks.

Q. Now, this daily statement that you sent to Lincoln Service, do you recall what went on there? A. Yes, sir. As I recall, there was the loans made for that particular period.

Q. Was this in a lump sum or individually? A. Individually. That is the name, the account number, the address, and the amount.

Then there was the collections made, interest and principle, and accounting or statistical information such as the bank balance, the amount of cash in the office, delinquency information.

110 Q. Did this form show the amount of money that the borrower made; or in other words, his ability to repay? A. I don't think I understand your question.

Q. When you made a loan to an individual in this form you sent to Lincoln Service, did you list on that form the amount of salary the borrower made? A. No, sir.

Mr. McCally: I have no further questions, you Honor.

The Court: Did you ever receive any bill from the Lincoln Service Corporation for expenses?

The Witness: Yes, sir.

The Court: How often did you receive them?

The Witness: There wouldn't be any particular time. There may be a month or possibly two months go by, but occasionally we would get a statement of accounts payable which included supplies and things of that nature that we may have purchased.

The Court: But you didn't exhaust your bank account?

The Witness: No, sir. In other words, we paid these. In other words, they would send us a statement of the amount of accounts payable and they would send Lincoln Service Corporation a check for that amount.

The Court: That wasn't done with respect to the dividends?

The Witness: I believe that was included in the
111 accounts payable.

The Court: Did you pay the dividends?

The Witness: No, that was all included in one lump sum, accounts payable.

The Court: All right.

Any further questions?

Redirect Examination

By Mr. Bauersfeld:

Q. Did you pay by separate check the supervision fee? A. Yes, sir, that was paid by separate check.

Mr. Bauersfeld: No further questions.

Mr. McCally: I have no further questions.

The Court: All right.

(Witness excused.)

Mr. Bauersfeld: Mr. Petruso.

Santo J. Petruso

took the stand, and being duly sworn, testified as follows:

The Court: Give your name and address to the reporter.

The Witness: Santo J. Petruso. My address is 742 Danbury Road, Cincinnati, Ohio.

Direct Examination

By Mr. Bauersfeld:

Q. Mr. Petruso, what is your business? A. I am in the consumer finance business.

112 Q. With what company are you associated? A. With the State Loan and Finance Management Corporation.

Q. Now, in 1958 and 1959, what was your business? A. I was in the consumer finance business also.

Q. With what company were you then associated? A. With the Lincoln Service Corporation.

Q. What was your position with Lincoln Service Corporation in 1958 and 1959? A. I was a supervisor.

Q. Where was your office located? A. At that time I was located in Pikeville, Kentucky.

Q. What were your duties as supervisor in 1958 and 1959? A. I had eleven subsidiaries under me and I went into these offices and I examined the loans and I examined collections to make certain that they were following the policy of the Banking Department.

Q. Banking Department of what? A. Of the State of Kentucky.

Q. Where were the subsidiary offices located that you supervised? A. They were all in the State of Kentucky.

Q. If an office was not being properly operated in your opinion when you went to that office, what did you

113 do? A. Well, I would review what I found was not being run properly with the manager and show him how to do it, and as a matter of fact, most of it was really showing—teaching him how to do it, offering suggestions and giving him written instructions.

Q. How often would you visit each office? A. I visit them approximately twice in a six-month period.

Q. And after completing a visit at an office, would you prepare a report? A. Yes, sir.

Q. What would you do with that report? A. I would give the original of the report to the manager and I

would mail a copy to the Lincoln Service Corporation.

Q. Now, as a supervisor of Lincoln Service Corporation, how often did you come to the office of Lincoln in the District of Columbia? A. I had never been there.

Q. Why didn't you come to the offices of Lincoln in the District of Columbia? A. I never had any business to transact with them there.

Q. Who paid your salary? A. Lincoln Service Corporation.

114 Q. Who had authority to hire and fire managers? A. I did.

Q. What did you have to do with the day-to-day operation of any particular company under your jurisdiction? A. Well, I had nothing to do with their daily operations.

Q. Whose responsibility was that? A. That was the manager's job.

Q. What did the State authorities have to do with the operations of the small loan offices you supervised? A. Their authority actually covered the entire operation and they of course examined the loans as well, examined collections and ledger cards and records to be certain that we were complying with their laws.

Q. What records were required to be kept by the State? A. Well, they required a loan register which was comprised of the customer's name and address, the account number, ledger card, legal papers, documents, and they required also a record of advertising.

Q. Were any of the loan subsidiaries under your jurisdiction ever questioned by the State authorities as to the manner in which they were being operated? A. Yes.

115 Q. And what occurred in those instances? A. Well, one instance that I recall very vividly is where we had two offices in one city. They were not allowed to double on the account, a customer couldn't have an account in each office, and by accident they happened to have one and they of course instructed the manager to reduce the rate of interest on the account. I believe in this case the interest was waived completely.

Q. What authority did a manager have in the operation of a subsidiary? A. Well, he had the authority to hire, fire, train his employees, he negotiated leases in many cases, and of course he had the approval to make loans and collect them, and as a matter of fact, just about everything in any office was within his authority.

Q. Where did the borrowers come from for these various loan subsidiaries that you supervised? A. They came from a radius of about twenty to twenty-five miles from the subsidiary.

Q. Did the loan subsidiaries belong to any trade or civic associations? A. They belonged to the local chamber of commerce, credit bureau, and in most cases the manager belonged to some type of civic organization within the community.

Q. Did the subsidiaries which you supervised engage in any other business other than the small loan business? A. No, sir.

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Q. When a manager of a particular subsidiary went on vacation, who had authority or how were checks signed for loans, expenses, and so forth? A. The manager always tried to anticipate how many checks would be used during the period he was gone and he would sign them in advance. He made the checks payable to himself and then he would endorse these checks to prevent fraud or anybody from using these checks for other than what they were orignally intended to be used for.

Q. Was this done in all cases? A. This was done in all cases. As a matter of fact, when I was manager that is how we handled that and this was prior to this period you are talking about.

Q. When a manager went on vacation, did they ever supplant him by an acting manager? A. In most instances it was somebody within the office. We would have the manager delegate the responsibility to run the office to a cashier, depending on who within the office had the experience to make the decisions.

Mr. Bauersfeld: You may inquire.

Cross Examination

By Mr. McCally:

Q. What position did you hold prior to becoming a supervisor for Lincoln Service Corporation, Mr.
117 Petruso? A. I was a manager.

Q. Of a small loan office? A. Yes, sir, one of the offices.

Q. Were you in effect then promoted to supervisor? A. Yes, sir.

Q. Now, when you in going out to these various small loan companies and supervising them, what exactly did you do? Did you review the account? A. Well, I could answer that by trying to give you what I actually did when I went in one of the first things I would do would be to check the cash in the office; and second thing, depending on where that would lead me, I would pull a certain number of loans and examine them.

Q. What was your purpose in examining these loans? A. Well, I was trying to determine whether the manager used good judgment when he made those loans, and I of course based this on my experience during the previous years and what had been taught to me by other managers.

Q. In making this judgment, did you follow any guide lines that had been laid down by Lincoln Service Corporation through their manual? A. Well, I didn't have a manual to operate by and mine was based strictly on what I felt was right and what was wrong.

Q. And I assume that is their ability to repay the
118 loan, that type of thing. A. Yes, sir.

Q. And you stated, I think, that you acted as a teacher to some degree. A. That was ninety-nine percent of it, yes.

Q. Now, after you had made examination, let's say, and you came back for the next one, did you then again look to see if the manager had followed the guide lines that you had laid down? A. Yes, I did.

Q. And this was done in a memorandum to the managers, is that correct? A. You mean my—

Q. Your observations. A. Yes, I prepared a written report and gave it to him.

Mr. McCally: I have no further questions, your Honor.

The Court: What reaction did you get when you filed a report with the Lincoln Service Corporation, did they acknowledge it or not?

The Witness: Well, their reaction varied. If I found something seriously wrong, why, they would write to me, and in most cases I guess one of my greatest problems was I didn't go into enough detail and they wanted more detail.

119 The Court: Did you have to discharge any managers?

The Witness: Yes, sir, I have had to.

The Court: Who instructed you to do it?

The Witness: Well, I did this on my own. If I went in and I gave them instructions and they didn't comply with the instructions, well, then I—within a reasonable length of time—in other words, not going in three or four times and repeating yourself, of course I would release them.

The Court: Did you employ someone to take their place?

The Witness: Yes, sir.

The Court: Did you do it on your own?

The Witness: Yes, sir.

The Court: No advice from someone else?

The Witness: No, sir. My procedure was to run an ad in a local city where I needed a manager and to hire him as I saw fit.

The Court: Any further questions?

Mr. McCally: One question, your Honor.

By Mr. McCally:

Q. Your authority to hire and fire managers was made solely upon your employment with Lincoln Service Corpo-

ration; you were employed by Lincoln Service Corporation? A. Yes, sir.

Q. Your authority extended from that corporation, you weren't an officer or director of any of the subsidiaries, were you? A. No, sir.

Mr. McCally: That is all.

The Court: Thank you very much.

(Witness excused.)

* * * * * * * * * *

Thornton W. Burnet

was recalled to the stand and having been previously duly sworn, testified further as follows:

Direct Examination

By Mr. Bauersfeld:

Q. Mr. Burnet, you previously testified in this case that you were the vice president and secretary of Lincoln Service Corporation during the fiscal year 1958 and during the period June 16, 1959, and that you were the assistant treasurer and assistant secretary of the subsidiaries of Lincoln Service Corporation? A. Yes.

Q. Today we would like to know what determined when a subsidiary would pay a dividend. A. There were two factors.

First, the subsidiary had to earn a sufficient profit in the locality in which he was operating.

Second, the board had to declare the dividend.

Q. By the board, you mean what? A. Board of directors of the subsidiary.

Q. Now, what motivated the board of directors of the subsidiary in declaring a dividend? A. There had to be a sufficient profit to declare the dividend.

Q. A sufficient profit? A. Surplus.

Q. Was there any set formula to determine when a subsidiary had a sufficient profit to declare a dividend? A. No, there was no set formula. The main consideration

was had the operations been profitable enough so that there was a sufficient surplus.

Q. Now how often would a dividend be declared by a subsidiary? A. Never more than once a year.

Q. Did all the subsidiaries pay dividends every year? A. No. Some would have a loss, it would not be profitable operations. Others would not have sufficient surplus.

Q. And will you describe the mechanics of declaring and paying dividends by Lincoln Service subsidiaries? A. The board of directors of the subsidiary would meet. They would declare the dividend. The treasurer of the subsidiary would pay the dividend by check.

Q. How were dividends paid to minority stock-
127 holders? A. In the same manner that they were paid to the Lincoln Service Corporation.

Q. At what time would they be paid to the minority stockholders? A. At the same time.

Q. I hand you Petitioners Exhibit 7 and ask you are these minutes typical of the way the subsidiaries declared dividends that you have just described? A. They are.

The Court: You say that is Petitioners Exhibit 7?

Mr. Bauersfeld: Yes, sir.

The Court: Where did you get it from?

Mr. Bauersfeld: It was attached to the recent stipulation of facts.

The Court: Oh, I see. That is a copy of it?

Mr. Bauersfeld: That is a copy of it.

You may inquire.

The Court: I think you ought to identify it by saying it is understood that the exhibit to which he refers is attached to the supplemental stipulation filed in February.

Mr. Bauersfeld: That is correct, sir.

The Court: February 2, 1966.

Mr. Bauersfeld: That is correct, sir.

The Court: All right.

128 Cross-Examination

By Mr. McCally:

Q. Mr. Burnet, who determined when the dividend was sufficient? A. The board of directors.

Q. And what do you mean by sufficient? What was the criteria for determining a sufficient situation? A. There was no set formula.

You had to have money. You had to have a profitable operation. There had to be a surplus before you could declare a dividend.

Q. Were you in on the decisions to declare the dividend? A. No, sir. I was as a director, yes.

Q. They must have discussed something. I want to know how they arrived at determining whether or not they were going to pay a dividend. I mean you could have a surplus of $100 or you could have a surplus say of $10,000. A. Yes. The mechanics of this would be that Mr. Delmar would propose a dividend to be paid by this particular subsidiary. This would be announced at the meeting of the board of directors, that it had been proposed that a dividend of X amount of dollars, which would require so much in total, should be paid. The board would then in most cases approve it.

Q. Was this basically Mr. Delmar's decision? A. Yes.

129 Q. And as I recall, he was chairman of the board of Lincoln and was the president of the subsidiaries? A. That is correct, sir.

Q. Now, when you had these board of directors' meetings, can you tell me exactly what was done mechanically? A. At boards?

Q. Of directors' meetings. A. Yes, sir. The meeting would be called to order—is this what you want?

Q. Yes. A. —by Mr. Delmar, who always presided. I as secretary would then read the minutes of the last meeting that was held.

Q. Who else was present at this point? A. At this point would be the other directors.

Q. And do you know approximately how many there were? A. Three to four directors for each subsidiary. However, we were usually holding maybe ten at a time.

Q. I see. A. So all directors would be there.

Now, this might be a total of eight people. For any one subsidiary corporation, though, it would be three to four directors.

After the reading of the minutes of the last meeting the chairman, Mr. Delmar, would then state the next order of business in most cases was the election of officers.

130 A slate would be presented to the board. The board would approve this.

Q. Who prepared the slate? A. Of officers?

Q. Yes. A. I would usually do that, because the same officers would be re-elected year after year, and we followed the same pattern.

Q. Was this at Mr. Delmar's direction? A. That is correct.

Q. Go ahead. A. Next, if dividends were to be presented, a proposal to declare dividends, then this would be announced to the board that it was the recommendation that a dividend be paid. The amount would be stated. The surplus would be presented so that the board would know what surplus was available, and how much the total amount of dividends would take and what the remaining surplus would be.

Mr. Delmar would then call for a vote on it. If they voted aye, the dividend was then declared. This usually constituted the entire meeting.

The Court: Do I understand that you went through this formula or this procedure in every case, or was it ever written up without the meeting?

The Witness: No, sir; it was never written with-

131 out the meeting. The meetings were always held.

The Court: How many subsidiaries in the company?

The Witness: 105.

The Court: Did you hold the meetings at the same time?
The Witness: We would hold ten of them at a time.
The Court: I see.

By Mr. McCally:

Q. Was there ever a time when they would take all of the surplus from a subsidiary? A. Not to my knowledge.
The Court: Mr. Delmar knew what the surplus was?
The Witness: Yes. Before the meeting, and the board of directors knew what it was at the meeting, the other directors.
The Court: They were officers of the—
The Witness: Not in every case, sir. Some of the directors of the Lincoln Service Corporation who were not officers were also directors of some of the subsidiary corporation, so there was usually a director present who did not know the surplus or the proposed dividend until he arrived at the meeting.
The Court: But you knew it?
The Witness: I knew it.
The Court: You and Mr. Delmar discussed it before?
The Witness: Yes.
The Court: They knew exactly what you were
131-A going to do? I mean I am not implying that was not normal, but is that the case?
The Witness: We knew what we were going to present to the board, yes, sir.

By Mr. McCally:

Q. Mr. Burnet, would it be a fair statement to say that Mr. Delmar decided what the dividend was going to be and simply directed you to write up the amount? A. No. Q. What was the process? Did just you and he discuss it? A. No.
Q. Well, how— A. There were others involved, the treasurer, myself, Mr. Blasey and Mr. Delmar.
Q. And if you determined, the three, four or five of you determined that there was enough surplus simply in your

opinion, then you declared a dividend; is that correct? A. No, sir; we did not declare the dividend. The dividend was then presented.

Q. I am sorry. A. Yes, in essence if you want to boil it down.

Q. I do not want to put words in your mouth here.

As you say, there was no formula, simply a question of judgment; is that correct? A. Yes, and the judg-
132 ment would usually come down to Mr. Delmar's judgment.

Q. Now will you describe the mechanics after the dividend had been declared, how it was actually paid? A. The treasurer drew a check.

Q. On who? A. It was on a banking account that we called a special account. It happened to be at the National Savings and Trust Company.

Q. In the District of Columbia? A. In the District of Columbia.

Q. All right, sir. How did the money get into that account? A. The Lincoln Service Corporation advanced the money on behalf of the subsidiary corporation.

Q. And they drew a check on that account? A. Yes.

Q. To Lincoln? A. To Lincoln and to the minority stockholders.

Q. And I guess Lincoln's was just a bookkeeping transaction actually, wasn't it? A. The cash flew, I mean actually went from the banking account back to Lincoln.

The Court: Let me see if I understand it.

How could the corporation pay the dividend if you did not have the money?

The Witness: The money was advanced by the
133 Lincoln Service Corporation on behalf of the subsidiary corporation. The subsidiary would then reimburse the Lincoln Service Corporation.

The Court: Yes, but you said that the subsidiary had funds from which to pay the dividend. Why should it borrow money from the bank?

The Witness: I didn't mean to say it had funds. I think I said it had a sufficient surplus.

The Court: It had a surplus, that is money, isn't it?

The Witness: No, sir, not necessarily. The surplus can be tied up in operating assets. You can have a surplus of $50,000 and only have cash of $5,000.

The Court: Well, if they didn't have the cash, how could they repay?

The Witness: The Lincoln Service advanced it on behalf of the subsidiary. The subsidiary would then reimburse the Lincoln Service by borrowing.

The Court: You said they didn't necessarily have anything, they might have only $5,000.

The Witness: They would borrow the money from the Lincoln Service Corporation to pay for the dividend.

May I use an example?

The Court: What I want to understand, if they did not have money to pay the dividend, how would they have money to reimburse?

134 The Witness: They would borrow the money from the Lincoln Service Corporation.

The Court: I understand that, but you—

The Witness: This would give them the necessary cash.

The Court: Yes, but they had to repay it, did they not?

The Witness: Yes.

The Court: Now, if they did not have money to pay a dividend, how did they get the money to repay Lincoln Service?

The Witness: I answered it was necessary to repay. It was not necessary to repay. They could have an account. They could on Lincoln Service money, at any time, and it was not necessarily compulsory that they repay this amount. During the course of business, if they got excess cash funds, they would repay the loan account.

The Court: You mean that you carried an account showing dividends that were owed? That is exactly what you did, didn't you? When you paid dividends, you put it on an account.

The Witness: No, sir. I do not think so.

The Court: You went through a little bit of a thing of borrowing money backwards and forwards but the result was just the same, wasn't it? You wound up with the subsidiary owing some money to the Lincoln?

The Witness: Yes, sir.

The Court: And you went through a form of borrowing from Lincoln and paying it?

135 The Witness: Correct.

The Court: But you didn't really do it. You didn't change any money or anything like that?

The Witness: Money would actually change at a later date, yes, sir. As the subsidiary in its day-to-day operations—

The Court: Let me ask you this: You had a fund in the Riggs Bank in the name of Lincoln Service Corporation. Do you mean to tell me that in every instance, for instance, you made a check out of that to Lincoln when it had the money in the bank already?

The Witness: Yes, sir.

The Court You didn't have it just within a bookkeeping entry?

The Witness: No. The declaration of the dividend and the payment of the dividend—

The Court: I notice one of those exhibits here shows $35,000.

The Witness: Yes, sir.

The Court: Now you drew a check, Lincoln drew a check for $35,000.

The Witness: Total dividend, Lincoln would draw a check for $35,000, deposit it in the special account. The treasurer of the subsidiary would then draw against this account paying—

The Court: But was it, was the special account in the name of every subsidiary?

136 The Witness: It had an account number, and as the checks were drawn, let's assume it was Acme

Loan Company of Whitesville, the subsidiary, declaring the $35,000 dividend. The treasurer would type on the check, the face of the check, Acme Loan Company of Whitesville, and would sign that check, and this check would be drawn to the minority stockholders and to the Lincoln Service Corporation.

If another corporation had declared a dividend at the same time on that check would be typed the name of the corporation. The checks were blank checks, only bearing an account number, and each subsidiary as it declared its dividend was paid by the treasurer on the face of the check would appear the name of the corporation, but it was all coming out of one account located here in the District.

The Court: I wanted to understand this.

Now, on a certain day, I think it was September 4, a dividend was declared, and the next day or that day somebody drew a check. On what account was that check drawn?

The Witness: On the special account on the bank, the National Savings and Trust Company.

The Court: Was the special account in the name of the subsidiary?

The Witness: The special account was not in the name of the subsidiary.

The Court: Whose name was it?

137 The Witness: It was just labeled "special account", attention Mr. Ralph G. Blasey and Jack C. Guynn, at 209 Woodward Building.

The Court: Did it name corporations?

The Witness: No, it did not have corporation name. The Lincoln Service Corporation went down and made the arrangements with the National Savings and Trust account.

The Court: And put money in it?

The Witness: Put money in it, yes, sir.

The Court: And that was the name of two persons?

The Witness: It was directed to them, yes, sir.

The Court: Who were the two persons?

The Witness: Mr. Blasey and Mr. Guynn.

The Court: Who are they?

The Witness: Officers of the Lincoln Service Corporation.

The Court: Are they also officers of the others?

The Witness: Subsidiaries, correct.

The Court: But they weren't officers of any particular—I mean that account didn't relate to any particular subsidiary?

The Witness: No, sir.

The Court: All right, now then you decided, the directors did, that the $35,000—these two men drew a check?

The Witness: No, the treasurer of the Lincoln Service Corporation would draw the $35,000.

The Court: Yes, but you said that the account on
138 which the check was drawn was in the name of two individuals.

The Witness: This is what appears on the bank statement, but our arrangement with National Savings and Trust Company was that we would draw checks out of this account, and they would pay attention to the account number, and the name that appeared on the face of the check was changed according to which corporation, it was changed according to the dividend.

The Court: This is just beyond me. I don't think I have enough sense to understand it, to tell you the truth, with my intellectual limitations.

What I want to understand is whether there were any changes in the finances of Lincoln. It had X number of dollars and wound up with the same number of dollars?

The Witness: No, sir, because minority stockholders also took something. Lincoln would put $35,000 in, but would not necessarily—

The Court: Lincoln was the sole—

The Witness: There were corporations in which Lincoln was 100 percent owner.

The Court: Let's take those.

The Witness: The money would come in an go back, yes, sir.

The Court: Let me see if I understand it.

After you declared a dividend of $35,000, somebody drew a check?

139 The Witness: Yes, sir.

The Court: Who signed it, the treasurer of the subsidiary?

The Witness: The treasurer of the Lincoln Service Corporation would draw the first $35,000 check, which would go into the bank account. The treasurer of the subsidiary corporation, which was paying the dividend, would then draw it out, payable to the Lincoln Service Corporation.

The Court: So the Lincoln Service Corporation would wind up with the same $35,000?

The Witness: In this particular instance, yes, sir.

The Court: And who was the treasurer of the subsidiary?

The Witness: Oscar C. Mitchell, who was also the treasurer of the Lincoln Service Corporation.

The Court: And he was in the office here in Washington?

The Witness: Yes, sir.

The Court: All right, go ahead, Mr. McCally.

By Mr. McCally:

Q. Mr. Burnet, all these directors meetings at which the dividends were declared were held in the District of Columbia, as I recall, were they not? A. That is correct.

Q. And it was up here in the Woodward Building? A. Right.

Q. Now you state that approximately ten of these
140 meetings were held a day. When you held these meetings, would you the next succeeding day hold ten more and ten more until the whole procedure had gone through? A. No. Generally speaking, there were four periods during the course of a year, March, June maybe, September and maybe in December, and at this time we would divide the minutes up and there would be say 25

in these periods, ten a day and two days later there might be another ten, and the balance.

Q. If you recall the last time you were here, not the last time, it was on May 25, 1965, I asked you at that time when Mr. Delmar was sitting there, there was really no way of knowing which hat he wore. A. That is correct.

Q. I believe you answered that in the affirmative. I want to direct your attention to the management fee for one moment. Was there any profit made on the management fee that was charged? A. I would have to look at one of the returns. At this point I cannot answer.

Q. It would vary? A. We would hope to make a profit on the management fee, but whether we actually did, you would set, the standard practice is to set about a half of one percent per month of the outstanding loan balance of the subsidiary corporation as a management fee. Hopefully this would yield us a profit.

Now if it didn't in the course of one year, the
141 management fee might be adjusted the following year.

The Court: How could you determine whether they made a profit or not?

The Witness: Well, whether your entire operations at the end of the year ended with a profit.

Th Court: What did you assign—

The Witness: In this particular case we would assign practically everything except the interest expense.

The Court: You mean your treasurers and things of that kind, salaries?

The Witness: All the expenses, salaries, yes, sir, office rent.

The Court: Why wouldn't Lincoln be responsible for that?

The Witness: I am sorry, I do not understand. We would try, Lincoln would try to make a profit off of its management fees.

The Court: But you said they charged them rent.

The Witness: No, I said this would cover our rent, our expenses. You asked, I thought, what expenses it would cover.

The Court: This is what I am trying to get to. What proportion of the rent would you assign to the management of these subsidiaries?

142 The Witness: We wouldn't assign any proportion of our rent to the subsidiaries. We would try and have their fees coming back to us cover all of our rent and other expenses.

The Court: That is what I mean.

The Witness: Yes.

The Court: You must have charged them.

The Witness: We did.

The Court: When you charged them for rent, what proportion of the rent did you charge them, 100 percent of it?

The Witness: We tried to cover 100 percent of the rent.

The Court: What about the portion that was related to Lincoln itself as distinguished from—

The Witness: This is what we were trying to cover, just Lincoln's rent, all of Lincoln's rent.

The Court: I understand that, but you must have assumed, if you charged the subsidiaries for rent, you must have assumed that it was for their benefit, the rent.

The Witness: The Lincoln Service rent?

The Court: Well, let's take the Woodward Building.

The Witness: Yes.

The Court: In that office you had X number of dollars each year. Now when you went to determine whether or not you made a profit from management, you must have said that with X number of dollars of rent related to management, that is for the management of the agency

143 for the subsidiaries. Did you take the whole rent?

The Witness: The whole rent?

The Court: Why didn't you assign some to Lincoln's business?

The Witness: Lincoln's business was management of the subsidiaries.

The Court: All right, I see.

Mr. McCally: I have no further questions.

The Court: Do you want to clear things up for me?

Mr. Bauersfeld: I am not sure I know how, your Honor.

The Court: I am not expert enough in these things to know what the witness is talking about.

Redirect Examination

By Mr. Bauersfeld:

Q. Mr. Burnet, would you take an example, and we are going to try and not interrupt you, and let you go through exactly how a subsidiary declared a dividend and how it was paid and then repaid. A. I assume what you are after here is the total concept which involved both Lincoln and the subsidiary corporation.

Q. Right. A. The subsidiary corporation has now declared a dividend of $35,000. The Lincoln Service Corporation, on behalf of the subsidiary, advanced, put $35,000 in this special account. On the date the dividend was
144 to be paid, the treasurer of the subsidiary would draw the check payable to the stockholders. The Lincoln Service Corporation would take in this check, make a record of it and deposit it. The Lincoln Service Corporation, performing its management functions, would make a record there that the subsidiary now owed it $35,000.

In the following month, as the general course, a bill would go forth from the Lincoln Service Corporation to the subsidiary corporation asking for reimbursement. For the subsidiary corporation to reimburse the Lincoln Service Corporation. They would have to borrow $35,000. So the subsidiary corporation would now borrow $35,000 to reimburse the Lincoln Service for the advance of this money.

The change that would occur would be that after the declaration of dividend, the subsidiary corporation now owed the Lincoln Service Corporation $35,000 more than it did before the dividend was declared, and their surplus would have been reduced by $35,000.

Q. And did the subsidiaries constantly owe Lincoln Service money? A. Yes. It would fluctuate from time to time. As they got surplus cash, they would send it into the Lincoln Service Corporation and reduce the amount that they owed. If the cash got too low, they needed more cash, they would ask for more. We would send it down to them. They would then owe us more.

Q. And in this way the dividend would be paid
145 by the subsidiary? A. That is correct.

Q. Along with all other funds? A. Along with other funds. Does that help?

The Court: How did you know when the subsidiary had money enough to repay?

The Witness: Whenever the manager had excess cash over and above what he felt he would need for the immediate future, he would just automatically send it in to us, and reduce the amount that he owed, that that subsidiary owed to the Lincoln Service Corporation.

The Court: There wasn't any identification of the money sent in, was there?

The Witness: Oh, yes. He drew the check and it came in.

The Court: I understand that.

The Witness: You mean as to where it came from?

The Court: No, what it was for.

The Witness: Yes, it was to repay the amount that—

The Court: Yes, but you also had other charges against it.

The Witness: Yes.

Well, those charges he paid by another check. When the bill went forth—let's say that I as the head of the purchasing had bought him a desk for $100. We would send
146 him a bill and he would send that back. That $100 would be identified as the advance on the furniture and fixtures. But if he had an excess $2,000, he would send that along in another check to reduce the amount that he owed us.

The Court: He owed you a lot more than the dividend?

The Witness: Oh, yes.

The Court: He owed you for management and everything else, didn't he?

The Witness: That is correct. He got another separate check for the management. He drew that automatically at the end of each month, based on his outstanding loan balance at that time. Then he would draw a check, usually one-half of one percent of his outstanding loan balance, and forward that in to us, and that would be identified as the management fees.

And then he would pay the bills that we sent down to him, and then when he had excess cash over and above these items, he would pay off his loan account.

As a matter of practice, I don't think any subsidiary ever fully paid off its loan account to us. They always owed us money.

Recross-Examination

By Mr. McCally:

Q. This payment when it came back would actually look like the repayment of a loan then instead of payment
147 on a dividend; is that correct? A. You couldn't identify at that point what it would be. It would be repayment of the loan account.

Q. Do you know how many of the subsidiaries had less than 100 percent ownership by Lincoln?

I am not trying to pin you down, just roughly. A. No. I would guess here about 30 percent, 35.

Q. And do you know what percentage of stock was owned by these minority stockholders? A. The maximum ownership I believe was 12 percent. It usually was around three, four or five. It started out at ten and then gradually got down lesser and lesser.

Mr. McCally: All right, sir. I have no further questions.

Mr. Bauersfeld: No further questions.

The Court: Before you go, did any of the corporations have offices in more than one place?

The Witness: Any of the subsidiary corporations?

During the period in question, no.

The Court: They were separate corporations and each—

The Witness: In each locality where they operated during this period.

The Court: All right, that is all. Thank you very much.

(Witness excused.)

Mr. Bauersfeld: Petitioner rests.

148 The Court: All right.

Mr. McCally: I have nothing, Your Honor.

The Court: Do you want to file a memorandum on this?

Mr. Bauersfeld: Judge, frankly I think we have filed all memoranda that we can help you with.

The Court: All right. I just wanted to give you the opportunity.

Mr. McCally?

Mr. McCally: No, sir. I have said all I can say.

The Court: I would like to ask you a question that has been in my mind.

Let's suppose that these corporations had different offices, I mean several offices, some in one state and some in another. Do you think they would have a commercial domicile in each place where they are located, in each place where they had their offices?

Mr. Bauersfeld: Well, I think it would depend upon their activities in each place.

The Court: I mean suppose just like they had loaned money to people.

Mr. Bauersfeld: I would be inclined offhand to say yes.

The Court: They would be commercially domiciled in every place they had an office?

Mr. Bauersfeld: Where they are conducting their business, yes.

149 The Court: Suppose they had several offices in one state, would they have a commercial domicile in each location?

Mr. Bauersfeld: I think you can only have one commercial domicile in any particular state, sir.

The Court: Why not?

A lot of cities tax corporations. Philadelphia does this, based upon certain transactions.

Mr. Bauersfeld: Well, I think they would be subject to tax wherever they are engaged in the loan business.

The Court: I am talking whether or not they had the commercial domicile.

Mr. Bauersfeld: If that is the criteria for tax, I would say yes.

The Court: Last week I was in Chicago, and we had a discussion on the definition of a commercial domicile, on a uniform division of net income for taxation purposes.

In section 1, I don't know what number the definition is, but a commercial domicile in the act—and I am not saying this is the proper definition—in the act itself where the corporation is managing director, and in a discussion in which Mr. McCally attended on the 19th of January in Chicago, where the assessors met—do you remember?

Mr. McCally: Yes, sir.

The Court: Administrators, that definition was questioned. It was suggested that the uniform law be
150 amended so that it would only relate to management, that the commercial domicile is where the corporation is managed, and that to put in the word "directly" might imply that it is also where the board of directors meet or where the stockholders meet, as distinguished from where it is managed.

I heard that, I mean I took part in the discussion. I am on the committee. I thought about this case. This wouldn't be binding on anybody.

Mr. Bauersfeld: I understand.

The Court: I am wondering whether or not it is where it is managed or where it is directed or where all things are done.

Mr. Bauersfeld: Of course it is our position, if the

Court please, that it is where the operation is carried out. That is what the Supreme Court has had in mind by commercial domicile, in my opinion, that where the commercial activity is.

The Court: They didn't say that in the Wheeling Steel Corporation case. They listed several things.

Do you remember it?

Mr. Bauersfeld: I remember it, yes, sir.

The Court: I was very much interested in your segregation, saying where they hold the board of directors meetings it isn't commercial domicile and where they do this it is not commercial domicile, or that.

(Off the record.)

151 The Court: Thank you all for coming down today. I appreciate it.

(Whereupon, at 10:35 a.m., The Court adjourned.)

BRIEF FOR PETITIONER

P705

United States Court of Appeals
for the District of Columbia Circuit

[illegible]

No. 22,572

[illegible], Petitioner,

v.

District of Columbia, Respondent

On Petition for Review of the Decision of the
District of Columbia Tax Court

[illegible]

[illegible]
Washington, D.C. 20006
Attorneys for Petitioner

STATEMENT OF QUESTIONS PRESENTED

1. The first question is whether the doctrine of commercial domicile, as a matter of law, may be invoked under the District of Columbia Corporate Franchise Tax Act to allocate petitioner's (i) dividend and (ii) interest income to the District of Columbia; and further, whether petitioner's subsidiaries were factually commercially domiciled in the District of Columbia although they were incorporated, licensed, and engaged in the business of making small loans wholly outside the District of Columbia.

2. The second question is whether the (i) dividend and (ii) interest income paid by petitioner's subsidiaries to the petitioner was from sources within or without the District.

3. The third question is whether, assuming *arguendo*, that petitioner's subsidiaries are commercially domiciled in the District and thus subject to the Income and Franchise Tax Act, all dividends received by petitioner from the subsidiaries must be excluded from taxation under Section 1 of Title X (Section 47-1580 D.C. Code, 1951 ed.).

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TABLE OF CASES

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OTHER AUTHORITIES CITED

STATUTES CITED

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* Cases chiefly relied upon are marked by asterisks.

REGULATIONS CITED

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,273

STATE LOAN AND FINANCE CORPORATION (SUCCESSOR BY MERGER TO LINCOLN SERVICE CORPORATION), *Petitioner,*

v.

DISTRICT OF COLUMBIA, *Respondent.*

On Petition for Review of the Decision of the District of Columbia Tax Court

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BRIEF FOR PETITIONER

JURISDICTIONAL STATEMENT

On February 28, 1964, the Assessor of the District of Columbia assessed deficiencies in income and franchise tax against the petitioner for the taxable year ended June 30, 1958 in the amount of $29,910.67, and for the taxable period ended March 16, 1959 in the amount of $20,674.21, plus in-

terest to the date of payment. The petitioner paid the deficiencies on May 21, 1964, plus interest. On May 22, 1964, petitioner filed its petition in the District of Columbia Tax Court seeking a refund of said assessments with interest thereon from date of payment. (J.A. 4) The District of Columbia Tax Court had jurisdiction under Section 47-1593 of the District of Columbia Code.

On June 3, 1966, the District of Columbia Tax Court entered its decision determining the deficiencies here involved. (J.A. 75) On June 6, 1966, petitioner filed a Petition for Review of the Decision of the Tax Court entered June 3, 1966. (J.A. 76) Jurisdiction is conferred on this Court by Section 4 of Title IX of the D. C. Revenue Act of 1937, as amended by Act of May 16, 1938, Section 47-2404, D.C. Code 1961 ed., and Section 3(b) of the Act of July 10, 1952.

STATEMENT OF THE CASE

Petitioner, State Loan and Finance Corporation, is a Delaware corporation. It merged on September 16, 1959, with Lincoln Service Corporation (a Delaware corporation), hereinafter called "Lincoln" and assumed all of its assets and liabilities. During the taxable periods here involved, Lincoln had executive offices in the District of Columbia. During these years Lincoln was a holding company whose principal business was raising funds through the sale of its capital stock, debentures, borrowings from banks and institutional lenders. Lincoln invested these funds in the capital stock of the subsidiaries or loaned it to them for operating purposes. In addition, Lincoln rendered various service functions to the subsidiaries for which it received fees. Lincoln had no trade or business with the general public. (J.A. 21, 81-82, 92, 112-113)

At the end of the fiscal year ended June 30, 1958, Lincoln's subsidiaries operated 103 loan offices in 11 states, and as of March 16, 1959, the subsidiaries operated 105 loan offices in 11 states. The subsidiary corporations were lo-

cated in the States of Florida, Georgia, Louisiana, South Carolina, Kentucky, Virginia, West Virginia, Maryland, Pennsylvania, Ohio and Texas. None of the loan subsidiaries during the period involved conducted any business in the District of Columbia. (J.A. 21, 81-82)

Lincoln's subsidiaries were engaged in the small loan business in accordance with the small loan laws of the various states where their offices were located. Each of the subsidiaries had to be licensed by the state in which its office was located in order to carry on the small loan business. Each of the petitioner's subsidiaries was strictly regulated by state laws and regulations. The subsidiaries engaged in no other business except the small loan business. (J.A. 66, 113, 134, 136-137, 140, 146-148)

The state laws in general required that each subsidiary obtain a license from the state for each office in which the small loan business was to be carried on. The state laws would set the maximum amount that could be loaned, the rate of interest that could be charged, the term of the loan, operating rules and procedures, and the records that the subsidiary had to maintain in each office. Under the state laws, money could only be loaned at the licensed place of business, and the records had to be maintained in the licensed place of business and be available there for inspection by the state examiners. The states enforced the small loan laws by having examiners make examinations of the records in the small loan offices to see that the business was being carried on in compliance with the state law. (J.A. 66, 113-115, 136-137, 147)

The subsidiaries, in accordance with the requirements of state law, kept in their offices (1) the note of the borrower; (2) chattel mortgage; (3) statement of transaction; (4) the original application for the loan and credit report, and (5) the ledger card. The ledger card had the borrower's name and address, amount and terms of loan, record of payment and balance due. It showed the exact status of

the loan at all times. These subsidiaries made small loans to customers living or working within a radius of 20 to 25 miles of their offices. The authority and discretion to make or reject loans and the collection procedures to be invoked was vested in the managers of the subsidiaries. The loans were repaid by borrowers by monthly payments either in check through the mail or in person at the subsidiary's office. The subsidaries belonged to the local Chamber of Commerce, Credit Bureaus, and civic associations. (J.A. 66-67, 113-114, 116-117, 135, 137, 139, 148)

The managers of the subsidaries were in charge of its small loan offices and, in addition to having complete authority and discretion to make or reject loans, they determined the collection procedure to be followed. The managers hired, trained and fired their employees, paid expenses such as rent, heat, light, telephone, supplies, administrative and supervision fees and local taxes. The managers negotiated for the renting of office space. The managers determined the money needs of the subsidaries and borrowed funds from Lincoln for that purpose. (J.A. 66, 68, 114, 116-117, 119, 134-135, 137-141, 147-148)

The subsidiaries maintained bank accounts in the cities in which they were located. The manager and cashier, by joint signature, in each office of the subsidiary had authority to draw on the bank account of the subsidiary. Lincoln did not have authority to draw on the bank account of the subsidiary, but an officer of the subsidiary located in the District of Columbia also had authority to draw on the local bank account of the subsidiary, but such authority was not exercised. The manager of the subsidiary paid from the local bank account the expenses of the subsidiary for light, heat, rent, administrative and supervision fees, etc. Loans were also made by check if the customer requested a loan be made by check. The manager paid his employees' salary from the local bank account, including his own salary. The bank account of

the subsidiary was reconciled monthly by the manager. (J.A. 68, 69, 118-119, 126, 127, 128-130, 143-145)

During the period here involved the subsidiaries of Lincoln had approximately 350 employees, all of whom worked outside of the District of Columbia. During this same period, Lincoln had about 20 employees. The subsidiaries rented the space for their small loan offices in the locality in which they were located. The office space was rented by the subsidiary. The subsidiaries owned the furniture, fixtures and office equipment in the small loan offices. The subsidiaries had no office, made no loans and engaged in no business, owned no property and had no payroll in the District of Columbia. (J.A. 81-82, 86, 96, 119, 127, 138, 148)

During the years here involved, Lincoln derived its income solely from (1) interest on loans to subsidiary corporations, (2) administrative fees paid by its subsidiary corporations for supervision and management services, and (3) dividends paid by certain of its subsidiaries. Lincoln supplied supervision and management services to its subsidiaries located in the several states and charged and received substantial sums from the subsidiaries for such services. These services were performed by supervisors employed by Lincoln who advised the personnel of the subsidiaries and reported to Lincoln. The supervisors had offices or were headquartered in the states in which the small loan subsidiaries were located. Each supervisor supervised 8 to 10 small loan offices. The supervisors would visit each office, investigate all loans that had been made since the last visit, go over with the manager of the subsidiary its activities and review what had been done, and try to correct any errors that may have been made. In addition, the supervisor trained and instructed the other personnel in the subsidiary's office. The supervisors would visit the office of each subsidiary about every 6 to 8 weeks. Practically all the services rendered by the supervisors

Why not all ?

to the subsidiaries were rendered outside the District of Columbia. (J.A. 22-23, 30, 82-84, 91-92; Pet. ¶ 5, I B; Admitted in Ans.)

Lincoln performed services for its subsidiaries such as accounting, purchasing advertising, the printing of forms, preparation of income tax returns, and the keeping of the formal books and records (general ledger) of the subsidiaries in its offices in the District of Columbia as a part of its service to the subsidiaries for which it was paid administrative fees. The general ledgers were maintained from the accounting report submitted daily from the subsidiaries to Lincoln. No individual records of the loans to borrowers by the subsidiaries were kept by Lincoln in the District of Columbia. The subsidiaries themselves did not maintain any books or records in the District of Columbia. (J.A. 41, 67-68, 83-84, 90, 115-116, 117-118, 125, 137)

Lincoln had no written agreement covering the management services to be performed for the subsidiaries. The fee paid by the subsidiaries to Lincoln was based on the amount of the subsidaries' outstanding loan balance. The rate of the charge for the service was the same for all subsidiaries. (J.A. 100-102)

During the years here involved, Lincoln received interest income from its subsidiaries. Money was lent to the subsidiaries by Lincoln and it received an interest-bearing note. Lincoln charged the subsidiaries interest at 1% above the rate of interest paid by Lincoln. (J.A. 22, 26, 82, 86, 93)

During the taxable years here involved Lincoln received dividend income from some, but not all, of its subsidiaries. Before Lincoln received the dividend, the subsidiary had to earn a profit from the small loan business conducted in the locality in which it was operated and then the Board of Directors of the subsidiary had to declare a dividend. When a dividend was declared and paid by a subsidiary,

Lincoln did not receive the entire dividend paid in those cases in which there were minority stockholders. There were minority stockholding interests other than mere qualifying shares in approximately 75% of Lincoln's subsidiaries. The minority stockholders would receive their proportionate share of any dividends paid by the subsidiaries. (J.A. 22, 30, 69-70, 82, 84, 98; Exs. 5 and 6, pp. 53-58)

During the taxable year ended June 30, 1958, Lincoln received 22 dividends from its subsidiaries in the total amount of $698,890.14. During the taxable period ended March 16, 1959, Lincoln received 18 dividends from its subsidiaries totaling $700,159. The dividends were paid by check from the subsidiary to Lincoln. Dividends were never paid more frequently than once a year. (J.A. 22, 69-70, 85, 95, 129; Pet. Exs. 1 and 2)

As a general rule each of petitioner's subsidiaries held one stockholders' meeting per year and one directors' meeting per year. These meetings were held in the offices of Lincoln in the District of Columbia. The meetings were perfunctory. The meetings of 8 to 10 subsidiary corporations would be held on the same day. The stockholders would go through the formality of a meeting for one subsidiary and agree that the other 8 or 9 would follow the same pattern. In other words, there was only a pilot meeting and minutes would be written for 8 or 10 subsidiaries. The minutes were prepared on mimeographed forms, with blank spaces to be filled in to take care of minor variances. The minutes of the pilot meetings of the stockholders would take 5 or 6 minutes. The pilot meetings of the directors would take 5 or 6 minutes. The subsidiaries held no formal meetings of officers in the District of Columbia during the years here involved. (J.A. 69, 85, 89-90, 119-121, 126-127, 132-133; Pet. Ex. 3)

The officers of the subsidiaries received no salary from the subsidiaries. The reason the officers received no salary was that they performed no services which would

justify the payment of a salary. The only services rendered by the officers of the subsidiaries in the performance of the duties of their office was the signing of reports, such as tax returns. The subsidiaries paid Federal, State and local taxes, including license and personal property taxes. (J.A. 90, 121-123, 140)

The President of Lincoln, during the period here involved, was Ralph G. Blasey. He was also the Vice President of Lincoln's subsidiary companies. Thornton Burnet was Vice President of Lincoln and also Assistant Treasurer and Assistant Secretary or Secretary of the subsidiaries. Some members of the Board of Directors of Lincoln also served on the Board of Directors of the subsidiaries. However, a majority of the Board of Directors of Lincoln did not serve on the Board of Directors of the subsidiaries. Mr. Delmar, the Chairman of the Board of Lincoln, served on the Board of Directors of all of the subsidiaries. Compensation by way of directors' fees was paid to the directors of the subsidiaries by the respective subsidiary. (J.A. 22, 89-90)

During the periods here involved, in carrying on its business of loaning money and rendering management services to its subsidiaries, the taxpayer incurred expenses of salary, rent, telephone, stationery, postage, insurance, interest, long-term debt expense, directors' fees, travel expense, repairs, depreciation, taxes, auto expense and other general operating expenses. (J.A. 23; ¶ 5 I C; Admitted in Ans.)

On October 9, 1958, Lincoln filed its Corporation Franchise Tax Return for the taxable year ended June 30, 1958, with the Franchise Office, showing a tax due in the amount of $7,430.52 which was paid with the return. In computing this tax, the taxpayer apportioned as income within the District the amount of $318,146.54 in interest and $290,407.79 in administrative fees. In determining the apportionment factor in the return, the taxpayer allo-

cated expense within and without the District. The taxpayer allocated as interest expense within the District the interest paid to payees within the District and allocated as interest expense without the District the interest paid to payees without the District. No portion of the dividend income received from the subsidiaries was allocated to sources within the District. On June 12, 1959, Lincoln filed its Corporation Franchise Tax Return for the taxable period July 1, 1958 to March 16, 1959 with the Finance Office, showing a tax due of $3,124.30 which was paid with the return. In computing this tax, the taxpayer apportioned as income within the District the amount of $209,806.94 in interest and $229,137.54 in administrative fees. In determining the apportionment factor, Lincoln allocated expenses within and without the District. Lincoln allocated as interest expense within the District the interest paid to payees within the District and allocated as interest expense without the District the interest paid to payees without the District. No portion of the dividend income received from the subsidiaries was allocated to sources within the District. (J.A. 24, 26, 87-88; Pet. Exs. 1 and 2)

On February 28, 1964, the Assessor issued a notice of assessment based upon a deficiency notice forwarded to the petitioner on December 2, 1963, determining deficiencies in tax for the taxable year ended June 30, 1958 in the amount of $29,910.67, and for the taxable period ended March 16, 1959 in the amount of $20,674.21, plus interest to the date of payment. The basis of the deficiency as determined by the Assessor was the disallowance of alleged expenses in connection with the receipt of dividends and his determination that all interest expense and long-term debt amortization should be allocated to the District of Columbia. Lincoln paid the deficiencies on May 21, 1964, for the taxable year ended June 30, 1958 in the amount of $29,910.67, plus assessed interest of $10,169.63, totaling $40,080.30, and for the taxable period ended March 16, 1959

in the amount of $20,674.31 and assessed interest of $6,098.92, totaling $26,773.23. (J.A. 24-25)

On May 22, 1964, petitioner filed this proceeding in the Tax Court for the District of Columbia, praying that the deficiency assessments made by the Assessor be cancelled and that the amount of the assessments, plus interest, be refunded to the petitioner from the date of payment thereof. (J.A. 4-13) The respondent filed an Answer on July 6, 1964, affirmatively alleging that the petitioner was engaged in business wholly within the District of Columbia or, in the alternative, that petitioner, if engaged in trade or business within and without the District, derived all of its income from trade or business activities conducted in the District, and sought an increase in the assessment of franchise taxes for the fiscal year ended June 30, 1958 in the amount of $20,682.78, plus interest, and for the fiscal period July 1, 1958 through March 16, 1959 in the amount of $20,030.29, plus interest. (J.A. 14-16) After a hearing, the Tax Court on January 19, 1965, entered its Findings of Fact and Opinion holding that the petitioner's subsidiaries were commercially domiciled in the District of Columbia. (J.A. 20-44) On February 3, 1965, petitioner filed a Motion for Rehearing and Reconsideration on the ground that the commercial domicile issue was not raised prior to the trial and hearing in the case and that, further, even upon the incomplete record the conclusion that the petitioner's subsidiaries were commercially domiciled in the District of Columbia was erroneous. (J.A. 45-46)

On February 16, 1965, the Court entered an Order and a Memorandum granting the Motion for Rehearing, subject to the limitation that the rehearing and reconsideration relate solely to the issue of commercial domicile of the subsidiaries of the petitioner and, further, granted leave to the respondent to file an amendment or substitution to a portion of its Answer making specific allegations relat-

ing to the domicile of the subsidiaries of the petitioner. (J.A. 47-49) On February 24, 1965, the respondent filed an amendment to Answer of District of Columbia. (J.A. 49-50)

Thereafter, a rehearing was held, and on March 7, 1966, the Tax Court entered its Findings of Fact and Opinion on Rehearing, in which it adhered to its original ruling. (J.A. 66-72) On June 3, 1966, the Court entered its decision determining that the deficiencies, as assessed by the Assessor and collected from the petitioner, were validly assessed and, in addition, determined an increased deficiency for the fiscal year ended June 30, 1958 in the amount of $4,015.31 and for the period July 1, 1958 to March 16, 1959 of $8,600.26. (J.A. 75) On June 6, 1966, petitioner filed this Petition for Review of the Decision of the Tax Court entered June 3, 1966. (J.A. 76)

STATUTES AND REGULATIONS INVOLVED

The statute involved is The District of Columbia Income and Franchise Tax Act of 1947, 61 Stat. 345, ch. 258, as amended (Sec. 47-1571 et seq., D. C. Code 1951), and the regulations promulgated thereunder. See Appendix A hereto.

STATEMENT OF POINTS

The points on which the petitioner intends to rely on this appeal are:

1. The Tax Court erred in holding that the subsidiaries of the petitioner were commercially domiciled in the District of Columbia.

2. The Tax Court erred in holding that dividend and interest income received by the petitioner from its subsidiaries was from sources within the District.

3. The Tax Court erred in failing to hold that the states in which petitioner's subsidiaries operated their small loan

businesses were the ones that gave the greatest protection and benefit to them from a "commercial domicile" standpoint.

4. Even assuming *arguendo* that the petitioner's subsidiaries are "commercially domiciled" in the District, the Tax Court erred in failing to hold that dividends paid are not income from sources within the District.

5. The Tax Court erred in holding that dividend and interest income received by the petitioner from its subsidiaries was subject to tax under the District of Columbia Income and Franchise Tax Act of 1947, as amended.

6. The Tax Court erred in holding that all of the interest paid to Lincoln Service Corporation by its subsidiaries is properly includible in gross income in the computation of net income for the taxable periods.

7. The Tax Court erred in holding that all of the dividends issued or paid by the subsidiaries to Lincoln is properly includible in gross income in the computation of net income for the taxable periods.

8. The findings of fact of the Tax Court is clearly erroneous and contrary to the evidence.

9. The opinion and decision of the Tax Court is contrary to law.

SUMMARY OF ARGUMENT

1. The subsidiaries of Lincoln, a Delaware corporation, were not commercially domiciled in the District of Columbia because their money making activities took place outside the District. The subsidiaries were licensed and regulated by the states in which they carried on their licensed small loan business and in which they were incorporated. The locale of the subsidiaries provided the source of the dividend and interest income they paid to Lincoln. The small loan business is purely a local business which consists

of lending small amounts to local borrowers and collecting the same with interest as allowed by state laws.

2. The only connection the subsidiaries of Lincoln had with the District was (1) interlocking of some officers and directors, (2) the perfunctory stockholders' and directors' meetings were held in the District, and (3) Lincoln rendered management and bookkeeping services to its subsidiaries for a fee. The subsidiaries employed 350 people, all outside the District, and Lincoln had only 20 employees. The conclusion of the Tax Court that the subsidiaries were commercially domiciled in the District so that the dividends and interest paid by the subsidiaries was from sources within the District is clearly erroneous.

3. The Tax Court's holding in this case is contrary to its decisions in other cases and is an unwarranted extension of the commercial domicile theory that has been invoked in the taxation of intangible property. The business activities of petitioner's subsidiaries in no way compared to the business activities described in the Supreme Court cases dealing with commercial domicile.

4. The term "doing business" for purposes of taxation or in the commercially domiciled sense is very different from the use of that term in cases dealing with service of process on a foreign corporation, and the Tax Court erred in relying on service of process cases as authority for its holding in this case.

5. One of the principal factors to take into consideration in determining the commercial domicile of a foreign corporation is to determine which state is required to give the greatest protection and benefit to the corporation. Applying these rules to this case, it is clear that the states in which petitioner's subsidiaries operated their licensed small loan businesses are the ones that give the greatest protection and benefit to them, and it is there that they are both legally and commercially domiciled.

6. The Tax Court erroneously interpreted the Income and Franchise Tax Act in holding that since the commercial domicile of Lincoln's subsidiaries was in the District, the source of the interest and dividend income received by Lincoln from its subsidiaries was the District of Columbia. To attribute to the District the interest and dividend income received from the subsidiaries, is to attribute to the District an arbitrary and unreasonably high proportion of petitioner's total income to the District and is both unauthorized by the Act and violative of the Interstate Commerce and Due Process Clauses of the Constitution.

7. The Supreme Court, in recent cases, has made it clear that state taxes imposed on interstate commerce be fairly apportioned and "that the method used display a modicum of reasonable relation to the corporate activities within the state." The novel application of the commercial domicile theory in the case at bar directly violates this mandate against multiple taxation and attributes to the District an arbitrary and unreasonably high proportion of petitioner's total income.

8. Assuming *arguendo* that taxpayer's subsidiaries are commercially domiciled in the District, then each subsidiary was subject to the Income and Franchise Tax Act. Under Section 47-1580, D.C. Code, 1951 Ed., any dividends received by Lincoln from its subsidiaries must be deemed to be from sources *not* within the District.

ARGUMENT

I

The Tax Court erred in holding that the subsidiaries of Lincoln were commercially domiciled in the District of Columbia.

The Tax Court in its findings of fact and opinion (J.A. 40) held that the commercial domicile of each of Lincoln's subsidiaries was the District of Columbia and that, therefore, the dividend and interest income received by Lincoln from its subsidiaries "were income from sources within

the District." This conclusion of the Tax Court is clearly erroneous and not supported by the evidence. The record shows that the sole purpose of the subsidiaries was the lending of money under the small loan laws of the 11 states in which they operated. The business of the subsidiaries, that is, its money making activity, the sine qua non of each subsidiary, was the state licensed small loan business conducted in the state of its incorporation and carried on by the local manager and his staff. It was at the location of the subsidiaries' offices in the various states that all their activities were in general supervised and managed, not in the District of Columbia, and it was there that all the business activities in a commercial domicile sense were carried on.

The very heart of the business activity of the subsidiaries was the lending and collection of money under the small loan laws of the various states. These laws strictly regulated the conduct and operation of the business within the state.[1] The small loan laws required that each subsidiary obtain a license from the state for each office in which the loan business was to be carried on. The state laws set the maximum amount that could be loaned, the rate of interest that could be charged, the term of the loan, the operating rules and procedures, and the records that the subsidiary had to maintain. Under the state laws, money could only be loaned at the licensed place of business, and records had to be maintained in the licensed place of business and be available there for inspection by state examiners. The states enforced the small loan laws by having the examiners make an examination of the business records of the subsidiaries which were required to be maintained in the small loan offices. The purpose of the examination by the state examiners was to see that the small loan business was being carried on in compliance with state law.

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[1] A list of small loan laws of the states where Lincoln's subsidiaries were located is set forth in Appendix B attached hereto.

The small loan business is peculiarly a local business. The operation of a licensed small loan business is not complex. It is unlike the operation of an interstate transportation system or the management of a large national steel manufacturing company. Its operation is purely local. It consists of lending small amounts to local borrowers and collecting the same with interest as permitted by state law and regulations. The entire operation here did not consist of a unitary business but consisted of a number of wholly independent small businesses, all located outside the District of Columbia.

Lincoln, a Delaware corporation, was a holding company during the years involved and received dividends from its subsidiaries. In *Consolidated Title Corporation* v. *District of Columbia* (D.C. Tax Ct. 1959), Doc. Nos. 1642-1660, Opinion No. 962, aff'd. (C.A.D.C. 1960), 107 U.S. App. D.C. 221, 275 F. 2d 885, the Tax Court held that such activities did not amount to "commercial activity" or "any trade or business." To same effect see *Continental Baking Company* v. *Higgins,* (CA-2, 1942), 130 F. 2d 164. The record shows that only formal and perfunctory stockholders' and directors' meetings were held in the District of Columbia. Lincoln did perform services in the District of Columbia for the subsidiaries in connection with financing and rendering management services. Lincoln received compensation for these services by way of interest for money lent and management fees for management services such as purchasing advertising, furnishing of forms, bookkeeping and the preparation of income tax returns. The formal bookkeeping or accounting records consisting of general ledgers were maintained by Lincoln in the District of Columbia, but the basic records were kept in the subsidiary's office so as to be available for the state examiners to audit.

The subsidiaries' managers had full and complete authority to operate the small loan business under the small loan laws of the various states in which they operated. The manager had complete authority and discretion to

make or reject loans, hire, train and fire employees. The manager paid the expenses of carrying on the subsidiary's business locally, which expenses included rent, heat, light, telephone, supplies, administration and supervision fees and local taxes. The managers even negotiated for the renting of office space. Each subsidiary maintained a local bank account and on this bank account the manager and cashier, by joint signature, were authorized to draw funds which they used to carry on the business of the subsidiary. During the years here involved, the subsidiaries of Lincoln employed approximately 350 people, all of whom worked outside of the District of Columbia. During this same period Lincoln had only 20 employees.

The record shows that as a general rule each of petitioner's subsidiaries held only one stockholders' meeting per year and one directors' meeting per year. These meetings were held in the office of Lincoln in the District of Columbia. The meetings were of the most perfunctory nature and in effect 8 or 10 corporations' stockholders' and directors' meetings were held simultaneously.

The officers of the subsidiaries received no compensation because they performed no services which justified the payment of salary. The only services rendered by the officers of the subsidiaries were formal and had to do with signing of reports and tax returns. The only control exercised by Lincoln over its subsidiaries was as principal stockholder. It did not exercise any direct control in the carrying on of the subsidiaries' business as state licensed small loan companies. If Lincoln felt that a particular subsidiary was not being properly operated, it had its supervisors make an investigation and advise the subsidiary's manager what steps should be taken to correct the operation. If the local manager did not take corrective action, he and the personnel could be changed or the subsidiary could be closed.

Finding of fact 3.(a), (J.A. 22), in stating that "All administrative policies and all business activities of the

subsidiaries, except the actual and direct lending of money, were made or carried on in the District, and all of its activities were in general supervised or managed in the District," even as modified by the findings of fact and opinion on rehearing, does not view the evidence in the correct prospective. It is viewed like the "tail wagging the dog." The sole function and purpose of the subsidiaries was the lending and collection of money under the small loan laws of the various states. This was the principal and exclusive commercial activity of the subsidiaries. They were organized and operated for no other purpose. They engaged in no other business. The record clearly shows that the "principal and administrative office" of each subsidiary instead of being in the District was, in fact, in the respective states in which each subsidiary was incorporated and licensed and where it actively conducted its small loan business in compliance with state laws. None of the loan subsidiaries maintained an office in the District of Columbia. None of the subsidiaries conducted the business of lending money in the District. The subsidiaries' only connection with the District was that their principal stockholder, Lincoln, a Delaware corporation, was located in the District. The formal corporate affairs, including their directors' and stockholders' meetings, and some of their officers, were located in the District. The formal accounting books (ledgers) were maintained in the District, but the basic records were kept in the local offices. The commercially significant "business" of each subsidiary was conducted in the state wherein its only office was situated, where the loans were initiated, made and repaid, and collection effort was made, and where the greatest government protection and services were required of local state government.

The holding of the Tax Court in this case is in direct conflict with its prior holdings in the cases of *Consolidated Title Corporation* v. *District of Columbia* (D.C. Tax Ct. 1959), Doc. Nos. 1642-1660, Opinion No. 962, aff'd. (C.A.

D.C. 1960), 107 U.S. App. D.C. 221, 275 F. 2d 885; *State Loan and Finance Corporation* v. *District of Columbia* (D.C. Tax Ct. May 6, 1955), Doc. No. 1443, and *Personal Industrial Bankers, Inc.* v. *District of Columbia* (D.C. Tax Ct. 1956), Doc. No. 1503, Opinion No. 923.

In the case at bar, the issue involving the theory of "commercial domicile" was not raised in the pleadings and not tried at the initial hearing in this case. In fact, petitioner's petition alleged:

> "* * * None of the loan subsidiaries of Lincoln Service Corporation, during the periods in question, conducted any business in the District of Columbia." (Pet. ¶ 5 I A)

This allegation of the petition was admitted in the respondent's answer. At the trial, counsel for the respondent did not state the theory upon which it was proceeding in connection with its affirmative answer which alleged merely that Lincoln engaged in business wholly in the District of Columbia or, in the alternative, if engaged both within and without the District of Columbia, derived all of its income from activities conducted in the District of Columbia. (J.A. 109-111) The commercial domicile theory was not injected into the case until the Judge of the Tax Court called upon counsel to brief the question. This is the reason why the rehearing was granted. (J.A. 47-48)

As the Tax Court recognized in its opinion (J.A. 40), the commercial domicile theory has been used only in cases involving the situs of intangibles for property taxes and has never been used for the purpose of determining the source of dividend or interest income. The Tax Court cited three Supreme Court cases in reference to the theory of "commercial domicile." The leading case on the theory of "commercial domicile" is *Wheeling Steel Corporation* v. *Fox* (1936), 298 U.S. 193, 56 S. Ct. 773, 80 L. ed. 1143. In that case the Supreme Court held that the State of West Virginia could constitutionally impose its intangible per-

sonal property tax on the accounts receivable and bank deposits of the taxpayer, a Delaware corporation, whose "commercial domicile" was found to be West Virginia. In regard to the accounts the Court said:

> "* * * The question here is not of the taxation of the plants in other States. The real estate, equipment and all tangible property there located is taxable by those states respectively. The accounts receivable with which we are now concerned are the proceeds of contracts of sale. While these contracts are negotiated and orders are taken at the various sales offices throughout the country, they are subject to acceptance or rejection at the Wheeling office. All invoices are payable at Wheeling. *Thus the contracts of sale become effective by the action taken at the Wheeling office and there the accounts are kept and the required payments made.* In the face of these facts, it cannot properly be said that the credits arise either where the goods are manufactured or at the sales offices where the orders are taken. * * *." 298 U.S. 193, 212. (Emphasis added)

The Court further found that although the taxpayer had bank accounts in several states, "all moneys are controlled and expenditures directed by the Wheeling office, and if the immediate expenditures were made elsewhere, it was made only under specific or general direction and control of that [Wheeling] office" and that "the bank accounts thus maintained and controlled were properly attributable to the Corporation * * * at its general office at Wheeling."

The second case discussed by the Tax Court was *First Bank Stock Corporation* v. *Minnesota,* 301 U.S. 234, 57 S. Ct. 1061, 81 L. ed. 1061. In that case the question involved was whether the taxpayer, a Delaware corporation doing business in Minnesota, could be taxed under an intangible property tax laid by Minnesota upon shares of stock held by the taxpayer in Montana and North Dakota state banking corporations. There was no dispute that the taxpayer qualified to do business in Minnesota and, in fact,

did transact its corporate business and financial affairs there. The taxpayer did not dispute that its "commercial domicile" was Minnesota. The taxpayer's position was that the shares of stock in the Montana and North Dakota banks were properly taxable by those states and that due process forbids the imposition of a property tax upon intangibles in more than one state. The Supreme Court merely held that the state had the power to tax shares of stock at the place of the domicile of the owner and, in addition, that the situs of an intangible affords an adequate basis for fixing a place of taxation. The case did not hold that the commercial domicile of the taxpayer's subsidiaries was Minnesota.

Both places

The next Supreme Court case cited by the Tax Court is *Memphis Natural Gas Company* v. *Beeler* (1942), 315 U.S. 649, 62 S. Ct. 857, 86 L. ed. 1090. There the Supreme Court determined the "commercial domicile" of the petitioner, a Delaware corporation, was in Tennessee. The facts showed that the petitioner purchased natural gas in Louisiana and transported it through its pipelines to points in Tennessee where petitioner delivered some 82% of the gas to two distributing companies which sold the gas to local consumers. The Supreme Court held that the petitioner was "commercially domiciled" in Tennessee and, therefore, subject to 3% tax imposed by Tennessee on its net earnings arising from business done within the State. The Court said:

> "Taxpayer is licensed by the State of Tennessee to do business there. It maintains a statutory office in Delaware and a stock transfer office in New York City, but conducts no business at either. It manages its business from its office in Memphis, Tennessee, where it keeps its accounts, provides for the payroll of employees on its line in Tennessee and other states, and prepares and sends out bills for gas delivered in Tennessee and other states. It has thus established a commercial domicile in Tennessee by virtue of which it is subject to taxation there upon its intangibles, un-

less such taxation infringes the commerce clause. *Wheeling Steel Corp.* v. *Fox,* 298 U.S. 193, 80 L. ed. 1143, 56 S. Ct. 773."

The business operation of the petitioner's subsidiaries is in no way comparable to the business activities described in the three Supreme Court cases. While the petitioner's subsidiaries conducted their formal corporate affairs, such as directors' meetings, in the District, the record shows that there was no significant commercial activity conducted in the District so as to constitute the District the commercial domicile of the subsidiaries. The Supreme Court found in the *Wheeling Steel Corporation* case that no sale, purchase or expenditure of the taxpayer was made except in the taxpayer's business office in West Virginia. In the instant case, the business of each subsidiary was conducted without the District of Columbia by the manager of the loan company and his staff. None of the loan transactions with customers of the subsidiaries were made in the District, nor did loan contracts ever "become effective by the action taken at the [Washington, D. C.] office" nor were the "loan accounts kept and required payments made" there as was the situation in the *Wheeling Steel Corporation* case. On the contrary, the loan contracts became effective by the action taken at the subsidiary's office and there the accounts were kept and the required payments made. No action was ever taken or required to be taken in the District of Columbia to make or collect a loan. In the face of these facts, it cannot be said that each of the subsidiary's domicile was the District of Columbia.

The commercial activity of the taxpayer in *Memphis Natural Gas Company* which caused the Supreme Court to determine that its "commercial domicile" was in Tennessee was entirely different and much more far-flung than those of the taxpayer's subsidiaries. In *Memphis Natural Gas Company* the taxpayer was licensed by the state of Tennessee to do business there. It managed its business

from an office in Memphis where it kept its accounts, provided for the payroll of employees on its gas line in Tennessee and other states, and it prepared and sent out bills for gas delivered in Tennessee and other states. In other words, all of its commercial activity with its employees, its suppliers and its customers was handled through its Memphis office. This is clearly distinguishable from the situation in the case at bar where all the commercial activities of Lincoln's subsidiaries were carried on in the states in which they were located. It is there that the loans were made, the repayment of the loans was received, and all collection activities in connection with said loans were handled. It also employs and pays its employees at the locale of its business office. In addition, the subsidiary's legal domicile was in the state in which it conducted its licensed business.

The teaching of the cited cases is that for purposes of taxation, a corporation may be subjected to tax in the locale in which it engages in business. The cases make it clear that the type of business referred to is commercial activities, such as the selling of products to customers or even lending of money to customers. It is from engaging in true commercial activities that a corporation acquires a "commercial domicile." The Supreme Court in *Memphis Natural Gas* expressly recognized this meaning of "business" when it stated that the taxpayer "maintains a statutory office in Delaware and a stock transfer office in New York City, but conducts no business at either." 315 U.S. 649, 652. Clearly, the Supreme Court did not believe that the activities of the corporation in Delaware or New York constituted "business" in the "commercial domicile" sense. The locale where a corporation holds its meetings and other necessary corporate functions does not constitute the "commercial domicile" of the corporation if, in fact, it engages in business—such as maintaining an office, soliciting and making loans, receiving payment on loans and undertaking collection activities in another state. See *Fletcher*

Cyclopedia of Corporations (1960 Revised Vol. 17), Section 8473, p. 584, and Section 8474, p. 589; *Model Business Corporation Act,* Section 99(b); *People* v. *Equitable Trust Co.* (1884), 96 N.Y. 387; *Benson* v. *Brattleboro Retreat* (1960), 103 N.H. 28, 164 A. (2d) 560; *In re Rice Chocolate Co.* (D.C. D. Mass. 1941), 36 F. Supp. 365. Furthermore, the handling of mere internal corporate affairs and intra-corporate activities as distinguished from dealing with "outsiders" does not constitute "doing business" in the commercial domicile sense. *Blount* v. *Peerless Chemicals, Inc.* (P.R.), 216 F. Supp. 612, affirmed (CA-2), 316 F. 2d 695.

This rule was well expressed by a California District Court of Appeals in deciding that a Kentucky railroad corporation, whose directors met in New York City, was "commercially domiciled" in California and subject to the California Bank and Corporation Franchise Tax Act. *Southern Pacific Co.* v. *McCalgan* (1945), 68 Cal. App. 2d 48, 156 P. 2d 81. The Court said:

> "The fact that the board of directors of plaintiff meets in New York is an important, a very important factor, to be considered in determining whether California is in fact the commercial domicile of this company. But that factor is not conclusive. Thus in Memphis Gas Co. v. Beeler, and in Maryland & Virginia Milk Producers' Ass'n. v. Dist. of Columbia, above cited, the commercial domicile was in a state other than the one in which the board met. That the state where ultimate control is exercised is not necessarily the commercial domicile is implicit in the holding in Smith v. Ajax Pipe Line Co., 8 Cir., 87 F. 2d 567, where the stock of the corporation involved was wholly owned, and therefore the corporation was ultimately controlled, by a holding company located outside the taxing state. When a corporation severs its ties with the state in which it is incorporated and engages in no corporate activities there, but engages in activities elsewhere, the contention that, as a matter of law the only state that can possibly be held to be its commercial domicile is that state where its board of directors

> meets, is as unrealistic, unsound, and artificial as the concept that the corporation for all tax purposes is domiciled in the state of incorporation. It was to free the law from this last mentioned artificial and fictional concept that the concepts of business situs and commercial domicile were applied by the courts. *The true test must be to consider all the facts relating to the particular corporation, and all the facts relating to the intangibles in question, and to determine from those facts which state, among all the states involved, gives the greatest protection and benefits to the corporation, which state, among all the states involved, from a factual and realistic standpoint is the domicile of the corporation.* That is partially a question of fact and partly a question of law." 156 P. 2d 81, 99. [Emphasis added]

Application of this "true test" to the facts in the case at bar shows that "among all the states involved" the state where each subsidiary is statutorily domiciled and where it actually engages in its business of making loans "gives the greatest protection and benefits to the corporation, which state, among all the states involved, from a factual and realistic standpoint is the domicile of the corporation."

The Tax Court cites the case of *Ferguson Contracting Co.* v. *Coal & Coke Railway Co.* (1909), 33 App. D.C. 159 in support of its opinion. This case involved the question of service of process on a foreign corporation under the District of Columbia statute. It is the taxpayer's position that the requirement of "engaging in business" for purposes of service of process should not be equated with "engaging in business" for determining a "commercial domicile." The law has liberalized service of process on foreign corporations in order to protect local plaintiffs—in determining the "commercial domicile" of a foreign corporation for tax purposes, commercial activities far more substantial than the location of officers' and directors' meetings are required. This is amply demonstrated by the broad reach of the Supreme Court's landmark decisions in

International Shoe Co. v. *State of Washington* (1945), 326 U.S. 310, 66 S. Ct. 154, 90 L. ed. 95, and *McGee* v. *International Life Insurance Co.* (1957), 355 U.S. 220, 78 S. Ct. 199, 2 L. ed. 2d 223. In *International Shoe Co.* the Court upheld the State of Washington's right to subject a foreign corporation to local jurisdiction whose salesmen solicited orders from prospective buyers to be accepted or rejected by the corporation outside the state. In *McGee,* the Court sustained the validity of a personal judgment against an insurance company whose only contact with the state was a single insurance contract concluded by mail.

Over twenty years ago this Court was cognizant of the trend. In *Frene* v. *Louisville Cement Co.* (C.A.D.C. 1943), 77 U.S. App. D.C. 129, 137 F. 2d 511, the Court, in sustaining service of process under our service of process statute (§ 13-103 D.C. Code 1940) on a foreign corporation whose employee in the District visited construction jobs promoting his employer's good will, said:

> "* * * In general the trend has been toward a wider assertion of power over non-residents and foreign corporations than was considered permissible when the tradition about 'mere solicitation' grew up." 137 F. 2d 511, 516.

The Court in *Goldberg* v. *Southern Builders* (1950), 87 U.S. App. D.C. 191, 184 F. 2d 345, pointed out that the term "doing business" has a different meaning in cases dealing with taxation from those dealing with service of process. The Court said:

> "The term 'doing business' is not one possessed of but a single meaning in law. It is used in connection with many different situations and must be characterized and defined according to the context. Thus, what constitutes doing business for purposes of taxation by a state, may be a very different regulation by a state, or for purposes of thing [sic] from what constitutes doing business for purposes of process and the subjection of a foreign corporation to the jurisdiction of local courts. Stevens, Corporations, pp. 999-1001 (2d Ed. 1949)."

See also *Green* v. *Robertshaw-Fulton Controls* (D.C. S.D. Ind. 1962), 204 F. Supp. 117, and *Norton* v. *Dartmouth Skis, Incorporated* (Colo. 1961), 147 Colo. 436, 364 P. 2d 866.

The significant distinction, a difference in kind rather than degree, between "doing business" in the jurisdictional sense, and "conducting business" in the "commercial domicile" sense is apparent in the Supreme Court's decisions. In both the *International Shoe Co.* and *McGee* cases, the Supreme Court relied on "minimum contacts" to support its finding of "doing business." But in the *Memphis Natural Gas Company* case, the Court expressly found that while the taxpayer maintained "a statutory office in Delaware and a stock transfer office in New York City" that it "conduct[ed] no business at either;" and its "commercial domicile" was in Tennessee. It cannot be doubted that although it conducted no business in either Delaware or New York in the commercial domicile sense, the taxpayer in *Memphis Natural Gas Company* was "doing business" in both places under the rules of *International Shoe Co.* and *McGee* cases. Petitioner submits that even assuming the taxpayer's subsidiaries were "doing business" within the ambit of *Ferguson Contracting Co., International Shoe Co.,* and *McGee,* they were not "conducting business" in the District under the rules of *Wheeling Steel* and *Memphis Natural Gas Company.*

The accepted rule on "commercial domicile" is that found in *Cargill, Inc.* v. *Spaeth* (Minn. 1943), 215 Minn. 540, 10 N.W. 2d 728, where the Minnesota Supreme Court held that a Delaware corporation had its "commercial domicile" in Minnesota for purposes of income taxation. The Court said:

> "• • • Where a corporation, organized under the laws of one state, transacts no business there and establishes its principal office in another where it manages and directs its business, it acquires a commercial domicile there, in virtue of which it is subject to taxa-

> tion there upon its intangibles, even though the business may extend into other states. For purposes of taxation, intangibles have a situs at the taxpayer's commercial domicile. * * *" 10 N.W. 2d 728, 733, 67 ALR 2d 1338.

Applying this accepted rule to the facts in the instant case, we find that each subsidiary of the taxpayer was organized under the laws of the same state in which it established its principal business office, where it managed and transacted all of its business. The fact that its directors' meetings were held in the office of its president does not make the District its "commercial domicile."

In the case at bar, each subsidiary's only connection with the District was minimal; their principal stockholder, the taxpayer, was located in the District, and their formal corporate affairs were handled here, but their "commercial domicile" was elsewhere. The commercially significant "business" of each subsidiary was conducted in the state wherein its loan office was situated, where the loans were initiated, made and repaid, and collection efforts made, and where the greatest government protection and services were rendered by the local state government. *None* of the cases have held that the state in which a corporation's formalisms and legal shell are maintained is a corporation's "commercial domicile" when the corporation exists under the laws of another state wherein it actually conducts its "business." To apply the "commercial domicile" doctrine to the facts in the instant case would be to hold that the taxpayer, Lincoln Service Corporation, was commercially domiciled in the District of Columbia, not its subsidiaries. This is the holding of *Wheeling Steel, Memphis Natural Gas,* and *First Bank Stock Corporation* cases. The taxpayer concedes that it is commercially domiciled in the District and is subject to the District of Columbia Income and Franchise Tax Act. However, petitioner submits that its subsidiaries were not commercially domiciled in the District during the taxable years involved.

II

The Tax Court erred in failing to hold that the states in which petitioner's subsidiaries operated their small loan businesses are the ones that give the greatest protection and benefit to them from a "commercial domicile" standpoint.

One of the principal factors to take into consideration in determining the commercial domicile of a foreign corporation is to determine which state is required to give the greatest protection and benefit to the corporation.[2] This rule is set forth in the case of *Southern Pacific Co.* v. *McCalgan* (1945), 68 Cal. App. 2d 48, 156 P. 2d 81, cited *supra*, p. 24.

The Supreme Court of the United States, speaking through Mr. Justice Stone, in *First Bank Stock Corporation* v. *Minnesota*, 301 U.S. 234, 57 S. Ct. 1061, 81 L. ed. 1061, pointed out the basis of the rule that the state which gives the greatest protection and benefit to a corporation is the state where it is commercially domiciled, as follows:

> "The rule that property is subject to taxation at its situs, within the territorial jurisdiction of the taxing state, readily understood and applied with respect to tangibles, is in itself meaningless when applied to intangibles which, since they are without physical characteristics, can have no location in space. See Wheeling Steel Corp. v. Fox, supra (298 U.S. 209, 80 L. ed. 1147, 56 S. Ct. 773). The resort to a fiction by the attribution of a tax situs to an intangible is only a means of symbolizing, without fully revealing, those considerations which are persuasive grounds for deciding that a particular place is appropriate for the imposition of the tax. Mobilia sequuntur personam, which has won unqualified acceptance when applied to the taxation of intangibles, Blodgett v. Silberman, 277 U.S. 1, 9, 10, 72 L. ed. 749, 756, 757, 48 S. Ct. 410, states a rule without disclosing the reasons for it. But we have recently

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[2] It should be emphasized that the District's statute is a franchise tax act and not an income tax statute. The District cannot give it extraterritorial effect.

had occasion to point out that enjoyment by the resident of a state of the protection of its laws is inseparable from responsibility for sharing the costs of its government, and that a tax measured by the value of rights protected is but an equitable method of distributing the burdens of government among those who are privileged to enjoy its benefits. See New York ex rel. Cohn v. Graves, 300 U.S. 308, ante, 666, 57 S. Ct. 466, 108 A.L.R. 721.

The economic advantages realized through the protection, at the place of domicil, of the ownership of rights in intangibles, the value of which is made the measure of the tax, bear a direct relationship to the distribution of burdens which the tax effects. These considerations support the taxation of intangibles at the place of domicil, at least where they are not shown to have acquired a business situs elsewhere, as a proper exercise of the power of government. Like considerations support their taxation at their business situs, for it is there that the owner in every practical sense invokes and enjoys the protection of the laws, and in consequence realizes the economic advantages of his ownership. We cannot say that there is any want of due process in the taxation of the corporate shares in Minnesota, irrespective of the extent of the control over them which the due process clause may save to the states of incorporation."

See also the more recent case of *General Motors Corporation* v. *State of Washington* (1964), 377 U.S. 436, 12 L. Ed. 2d 430, 84 S. Ct. 1564.

The Supreme Court applies this rule consistently in all cases involving the power of a state to tax a multistate business. In *Wisconsin* v. *J. C. Penney Co.* (1940), 311 U.S. 435, 444, 61 S. Ct. 246, 85 L. ed. 267, it stated the rule as "[t]he simple but controlling question is whether the state has given anything for which it can ask return."

The handling of mere internal corporate affairs and intra-corporate activities as existed in the case at bar, as distinguished from dealing with "outsiders", does not con-

stitute "doing business" in the commercial domicile sense. In *Blount* v. *Peerless Chemicals, Inc.* (P.R.), (CA-2), 316 F. 2d 695, affirming 216 F. Supp. 612, the Court said:

> "Appellants also contend that the activties in New York as President Denis Carey rendered Peerless (P.R.) amenable to the jurisdiction of the New York court. We find this contention without merit. The facts as amply set out by Judge *Dooling* reveal, in effect, that Carey, a resident of New York and President of both Peerless New York and Peerless (P.R.) remained here the greater part of the year but was in constant liaison with the Puerto Rican corporation. He decided, at the Long Island City offices of Peerless New York, questions of corporate concern, investigated into market and price conditions, sometimes signed checks drawn on the Puerto Rican bank account of Peerless (P.R.), and on a few occasions was the object of solicitation by certain manufacturers of chemicals. But he solicited no sales in New York and signed no contracts here on behalf of Peerless (P.R.). In short, the far greater proportion of Carey's activities in New York as president of the Puerto Rican corporation was related to *intra*-corporate affairs, rather than to business dealings with residents of New York, which seems to be one of the elements fundamental to the invocation of the 'doing business' standard. (See Hurley v. Wells-Newton *Nat.* Corp., 49 F. 2d 914, 919 (D.C. Conn. 1931) Hincks, J.). The less the activities of a foreign corporation are devoted to systematic dealings with outsiders within the forum state, the less likely is it that the corporation has reaped the benefits and protection from the laws of that State, and the less appropriate is the assertion of judicial authority."

If it is inappropriate for assertion of judicial authority, it is even less appropriate as a basis of taxation. Applying this rule to the facts in the case at bar, it is clear that the states in which the petitioner's subsidiaries operate their business are the ones that give the greatest protection and benefit to the subsidiaries.

III

The Tax Court erred in holding that dividend and interest income received by the petitioner from its subsidiaries was from sources within the District.

The Tax Court's opinion concludes that since the commercial domicile of Lincoln's subsidiaries was in the District, the source of the interest and dividends received by Lincoln from its subsidiaries was in the District of Columbia. This is an erroneous interpretation of the Franchise Act. To attribute to the District of Columbia the interest and dividend income received by Lincoln from its subsidiaries, all of whom were located outside the District and who derived their income from sources outside the District, is to attribute to the District an arbitrary and unreasonably high proportion of petitioner's total income to the District and is, therefore, both unauthorized by the Franchise Act and violative of the interstate commerce and due process clauses of the Constitution.

The Tax Court recognized that the commercial domicile theory has been used only in cases involving the situs of intangibles for property tax purposes and has never been used for the purpose of determining the source of dividend or interest income. The novel application of this theory in the case at bar results in multiple taxation in direct violation of the mandate against a multiple taxation announced by the Supreme Court in the recent case of *General Motors Corporation* v. *District of Columbia* (1965), 380 U.S. 553, 14 L. ed. 2d 68, 85 S. Ct. 1156.

In 1958, Lincoln, a Delaware corporation, received from its more than 103 subsidiaries interest of $986,806.88 and dividends from 22 of its subsidiaries of $698,890.14. In the period ended March 16, 1959, Lincoln received from its subsidiaries interest of $595,197.03 and dividends of $700,159 from 18 of its subsidiaries. The decision of the Tax Court includes in Lincoln's income the total of the interest and

dividends received in 1958 in the amount of $1,685,697.02 and for the period 1959 $1,295,356.03 with the resulting additional franchise taxes. In 1958, exclusive of dividend and interest income, petitioner had gross income from administrative fees of $900,768.57, only a portion of which is subject to tax. Under the Tax Court's opinion over 65% of petitioner's gross income for the year 1958 is represented by dividends and interest received from its subsidiaries who carried on no business in the District of Columbia. For the period ended March 16, 1959, under the Tax Court's opinion, over 61% of petitioner's income for that period was represented by interest and dividends received from the subsidiaries who carried on no business in the District of Columbia.

In *General Motors Corporation* v. *District of Columbia* (1965), 380 U.S. 553, 14 L. ed. 2d 68, 85 S. Ct. 1156, the Supreme Court made it abundantly clear that state taxes imposed on interstate commerce be fairly apportioned and "that the methods used display a modicum of reasonable relation to corporate activities within the state." The Supreme Court further stated that while it was reluctant to review decisions of the Court of Appeals for the District of Columbia concerning local legislation where such decisions "create substantial dangers of multiple taxation", the Court will nevertheless review such cases because of the impact beyond the Potomac shores. Here, petitioner's subsidiaries paid income taxes on their total income to the states in which they were located without apportionment, and to the extent that dividends were paid to petitioner the same income is being taxed twice. Although the *General Motors* case involved the apportionment of income derived from sales in the District of Columbia, the Supreme Court's opinion makes it clear that the District can only tax income that is derived from sources within the District and that this requires something more than the "commercial domicile" theory set forth in the Tax Court's opinion in this case.

In the case of *General Motors Corporation* v. *State of Washington*, 377 U.S. 436, 12 L. Ed. 2d 430, 84 S. Ct. 1564, the Court stated the rule as follows:

> "A careful analysis of the cases in this field teaches that the validity of the tax rests upon whether the state is exacting a constitutionally fair demand for that aspect of interstate commerce to which it bears a special relation. For our purposes the decisive issue turns on the operating incidence of the tax. In other words, the question is whether the state has exerted its power in proper proportion to appellant's activities within the state and to appellant's consequent enjoyment of the opportunities and protections which the state has afforded. Where, as in the instant case, the taxing state is not the domiciliary state, we look to the taxpayer's business activities within the state, i.e., the local incidents, to determine if the gross receipts from sales therein may be fairly related to those activities. As was said in *Wisconsin* v. *J. C. Penney Co.*, 311 U.S. 435, 444 (1940), '[t]he simple but controlling question is whether the state has given anything for which it can ask return.'" 377 U.S. 436, 440-41.

In the case at bar, it is clear that the simple but controlling question must be answered in the negative.

In the case of *Hans Rees' Sons* v. *North Carolina ex rel. Maxwell*, 283 U.S. 123, 75 L. Ed. 879, 51 S. Ct. 385, the Court held the operation of the North Carolina income tax statute, which allocated income on the basis of real and personal tangible property in the state over the taxpayer's property everywhere, worked an unconstitutional result where the income attributable to North Carolina was out of all appropriate proportion to the business transacted by the taxpayer in North Carolina. Mr. Chief Justice Hughes, speaking for the Court, said:

> "Undoubtedly the enterprise of a corporation which manufactures and sells its manufactured product is ordinarily a unitary business, and all the factors in that enterprise are essential to the realization of prof-

its. The difficulty of making an exact apportionment is apparent, and hence, when the state has adopted a method not intrinsically arbitrary, it will be sustained until proof is offered of an unreasonable and arbitrary application in particular cases. But the fact that the corporate enterprise is a unitary one, in the sense that the ultimate gain is derived from the entire business, does not mean that for the purpose of taxation the activities which are conducted in different jurisdictions are to be regarded as 'component parts of a single unit' so that the entire net income may be taxed in one state regardless of the extent to which it may be derived from the conduct of the enterprise in another state. * * *

When, as in this case, there are different taxing jurisdictions, each competent to lay a tax with respect to what lies within, and is done within its own borders, and the question is necessarily one of apportionment, evidence may always be received which tends to show that a state has applied a method, which, albeit fair on its face, operates so as to reach profits which are in no just sense attributable to transactions within its jurisdiction."

The foregoing facts and cases show that to attribute to the District of Columbia the interest and dividend income received by petitioner from its subsidiaries, all of whom are located outside of the District and who derive their income from which to pay interest and dividends from sources outside the District, is to attribute to the District an arbitrary and unreasonably high proportion of petitioner's total income and is, therefore, both unauthorized by the Franchise Act and violative of the Interstate Commerce and Due Process Clauses of the Constitution.

The petitioner's position that interest and dividends received from the subsidiary has a source without the District is supported by tax decisions from other jurisdictions. In *Kentucky Tax Commission* v. *Fourth Avenue Amusement Co.* (1943), 293 Ky. 668, 170 S.W. 2d 42, the taxpayer, a Kentucky corporation, was engaged in the theatre

business, owning four theatres in Kentucky. The taxpayer owned all the stock of Western Indiana Theatres Corporation which operated three theatres in Indiana. In 1936 the subsidiary paid a dividend of $20,000 to the taxpayer which on its return was allocated to outside Kentucky. The Kentucky Tax Commission allocated the dividend within Kentucky. The Kentucky statute provided:

> "(a) Interest, dividends, rents and royalties (less related expenses) received in connection with business in the State, shall be allocated to the State and where received in connection with business outside of the State shall be allocated outside of the State."

The Supreme Court of Kentucky held:

> "In the case before us the Fourth Avenue Amusement Company owned all of the stock of the Indiana corporation. The two corporations were engaged in precisely the same type of enterprise. Appellee's ownership of all the capital stock of the Indiana corporation was for the purpose of controlling the policies and operations of that company and using it as a mere adjunct, agency, or instrumentality of the Kentucky corporation in the conduct of the unified business. The income involved had its source in the state of Indiana. It arose out of business transactions there. The facts disclosed by the record convince us that the stockholding in question was an integral part of appellee's business, and that the method of allocation provided by the statute requires that the dividends received from the Indiana corporation should be allocated outside of Kentucky. We think the legislative intent is clear, but if there were any doubt in that respect it would be necessary to keep in view the rule that taxing statutes are construed most strongly against the government and in favor of the taxpayers. Reeves v. Brown-Forman Distillers Corporation, 288 Ky. 677, 127 S.W. 2d 297; Martin v. F. H. Bee Shows, 271 Ky. 822, 113 S.W. 2d 448.
>
> The circuit court correctly held that the dividends here involved were not properly included in the gross income of appellee for the purpose of computing its income tax, and the judgment is affirmed."

In the case of *In re Union Electric Company of Missouri,* 349 Mo. 73, 161 S.W. 2d 968, the electric company was a Missouri corporation engaged as a public utility in supplying its customers with electricity and steam. It owned stock in eight foreign corporations and a foreign stock company operated by trustees. It received from these companies in 1937 and 1938 large sums in dividends. The sole question presented was whether or not these dividends constituted income received by the taxpayer from sources within the state under the Missouri Income Tax Act which imposed a tax upon corporate income from sources within the state. The Court, in holding that dividends received from foreign corporations were not included in the gross income of the Missouri corporation, said:

> "In the field of income taxation in particular it is important to penetrate beyond legal fictions and academic jurisprudence to the economic realities of the cases. It is conceded that the actual expenditure of labor and the actual use of capital which gave rise to the income represented by these dividends took place outside the state of Missouri. We are forced to the conclusion therefore that the source of this income was outside the state and the dividends received by the taxpayer should not be included in its gross income for the purpose of computing its Missouri income tax."

In *Union Electric Company* v. *Coale,* 347 Mo. 175, 146 S.W. 2d 631, the taxpayer received dividend income amounting to more than $3,000,000 on stock of foreign corporations. The Missouri court, in holding that the dividends received were not included in the gross income of the taxpayer under the Missouri statute, said:

> "'The source of * * * income is the place where it was produced.' In re Kansas City Star Company [346 Mo. 658], 142 S.W. 2d 1029, loc. cit. 1037 [130 A.L.R. 1168], and it cannot be said, with sound reason, that the income here concerned was produced in this state."

In *American Bakeries Company* v. *Johnson* (1963), 259 N. Car. 419, 131 S.E. 2d 1, the Supreme Court of North Carolina held that dividends received by a taxpayer engaged in business in North Carolina from its subsidiary engaged in business in another state were not subject to North Carolina tax and said:

> "As we interpret our tax laws, the mere fact that a foreign corporation engaged in business in North Carolina and other states, owns a subsidiary corporation in another state, which subsidiary does no business in North Carolina and owns no property in this State but is engaged in a similar business to that of the parent corporation, such factual situation does not of itself require the parent corporation to prorate the dividends received from such subsidiary to all the states in which the parent corporation does business.
>
> Certainly the parent corporation controls and supervises its subsidiary, but the stipulations and facts found below clearly establish the fact that Cushman's Sons, Inc. is not a customer of American Bakeries Company or engaged in selling its products. In other words, this subsidiary is not a retail outlet for the parent corporation, but manufactures its own bakery products and sells them to the retail trade, not to or through the parent corporation."

The foregoing cases recognize that even though a parent corporation controls and supervises its subsidiaries, the dividends received from the subsidiary located in another state were from sources without the taxing state. In the case at bar, the income which was earned by the subsidiaries and from which the dividends and interest were paid was the small loan businesses carried on by the subsidiaries strictly in accordance with the state laws where they were located. This is where the income was produced. This was the source of the income. Consequently, the dividend and interest income received by the petitioner from its subsidiaries during the period here involved was from sources without the District.

IV

Even assuming arguendo that the taxpayer's subsidiaries are "commercially domiciled" in the District, the Tax Court erred in failing to hold that dividends paid are not income from sources within the District.

While the respondent originally conceded that none of the petitioner's subsidiaries conducted any business in the District, if, for purposes of argument, we assume that Lincoln's subsidiaries are commercially domiciled in the District, then each subsidiary was subject to the Income and Franchise Tax Act. (D.C. Code § 47-1571 et seq., 1951 ed.) Under that Act any dividends received by Lincoln from its subsidiaries so "subject to taxation" must be deemed to be from sources *not* within the District. Section 1 of Title X (§ 47-1580 D.C. Code, 1951 ed.) of the Act provides:

> "It is the purpose of this article to impose * * * a franchise tax upon every corporation * * * for the privilege of carrying on or engaging in any trade or business within the District and of receiving such other income as is derived from sources within the District: *Provided, however,* that in the case of any corporation, the amount received as dividends from a corporation which is subject to taxation under this article * * * shall not be considered as income from sources within the District for the purposes of this article. * * *"

In *Consolidated Title Corporation* v. *District of Columbia* (D.C. Tax Court 1959), Docket Nos. 1642-1660, Opinion No. 962, aff'd. (C.A.D.C. 1960), 107 U.S. App. D.C. 221, 275 F. 2d 885, the taxpayer, a Maryland corporation, received dividends from its three subsidiaries, District corporations engaged in the title business within the District. The taxpayer contended that the dividends were received from corporations subject to tax by the District and, therefore, were not from sources within the District under Section 1, Title X (§ 47-1580 D.C. Code, 1951 ed.) of the Act. This Court, in affirming the Tax Court's decision, did

not pass upon this question but the Tax Court, after stating the rule that provisions for deductions, exclusions and exemptions must be narrowly construed, said:

> "None of the three operating subsidiaries were subject to either income taxation under the Revenue Act of 1939 or subject to franchise taxation under the Income and Franchise Tax Act of 1947. They were subject solely to the gross receipts tax. See section 47-1702, D.C. Code, 1951 Edition. The deduction for intercompany dividends allowable under both acts was, therefore, not available to the petitioner. The action of the Court in sustaining the objection to the introduction of evidence concerning the payment of gross receipts taxes by the operating subsidiaries was proper."

Thus, while expressly recognizing the dividend exemption in the statute, the Tax Court found the taxpayer's subsidiaries not to come within the provisions of the exemption. In the case at bar, unlike the subsidiaries of *Consolidated Title Corporation* which were taxed under § 47-1702 (D.C. Code 1951 ed.) because they were engaged in the title and guaranty business, Lincoln's subsidiaries, being corporations engaged in the small loan business, if "commercially domiciled" in the District, would be taxable under the Income and Franchise Tax Act.

In the same opinion, the Tax Court construed the language of Section 1, Title X (§ 47-1580 D.C. Code, 1951 ed.) of the Act and said:

> "The Income and Franchise Tax Act is a radical change from the 1939 Act in respect of corporations. Instead of an income tax it imposes a franchise tax for two privileges, namely, (a) of engaging in business in the District of Columbia and (b) of receiving income from other sources within the District. While the tax is measured by net income, it is a true excise."
>
> "* * * [A] corporation becomes subject to franchise taxation if either (a) it engages in business or (b) it receives income from other sources within the District. * * *."

sidered as income from sources within the District for the purposes of this article. The measure of the franchise tax shall be that portion of the net income of the corporation and unincorporated business as is fairly attributable to any trade or business carried on or engaged in within the District and such other net income as is derived from sources within the District: *Provided further,* that income derived from the sale

CONCLUSION

Congress, in enacting the Income and Franchise Tax Act, intended only to impose a tax on income "fairly attributable" to any trade or business carried on or engaged in within the District and such other net income as is derived from sources within the District. The Tax Court's conclusion that Lincoln's subsidiaries were commercially domiciled in the District of Columbia so that the source of Lincoln's interest and dividend income was from within the District, completely disregards the intent of Congress and the limitations imposed by the Income and Franchise Tax Act. Furthermore, the interpretation of the taxing Act by the Tax Court in the case at bar, attributes to the District an arbitrary and unreasonably high proportion of petitioner's total income so as to work an unconstitutional result and is violative of the Interstate Commerce and Due Process Clauses of the Constitution. For these reasons, this Court should reverse the decision of the Tax Court with instructions to enter a judgment for the petitioner for the amount of refunds claimed.

Respectfully submitted,

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TITLE III—NET INCOME, GROSS INCOME AND EXCLUSIONS THEREFROM, AND DEDUCTIONS

Sec. 3. (a) Deductions Allowed.—The following deductions shall be allowed from gross income in computing net income:

• • • • • • •

(14) Allocation of Deductions.—In the case of corporations and unincorporated businesses, the deductions provided for in this section shall be allowed only for and to the extent that they are connected with income arising from sources within the District within the meaning of title X of this article; and the proper apportionment and allocation of the deductions to be allowed shall be determined by the Assessor under formula or formulas provided for in section 2, title X of this article.

(Sec. 47-1557b(a)(14), D.C. Code 1951)

Regulations

Sec. 10.2. Measure of Tax—Allocation and Apportionment. The measure of the franchise tax shall be that portion of the net income of the corporation and unincorporated business as is fairly attributable to any trade or business carried on or engaged in within the District, as defined in the Act, and such other net income as is derived from sources within the District. The portion of such net income which is "fairly attributable" to any trade or business or such other net income as is derived from sources within the District shall be determined by allocation and apportionment thereof as prescribed in Sections 10.2-(b), 10.2-(c), 10.2-(d).

• • •

Sec. 10.2-(c). Income Attributed to the District of Columbia. If the trade or business is carried on or engaged in wholly within the District, the entire net income from trade or business shall be allocated to the District. If the trade or business is carried on partly within and partly without the District, that portion of

the net income from trade or business to be apportioned to the District shall be determined as follows:

* * *

(2) Where income for any taxable year is derived from work done or services performed, the portion thereof to be apportioned to the District shall be such percentage of the total of such income as the aggregate of charges for or costs of such work done and services performed in the District bears to the aggregate of such charges for or costs of work done and services performed by the taxpayer everywhere. The Assessor is authorized to use the aggregate of "charges" or the aggregate of "costs" with respect to work done and services performed if in his opinion it will produce an equitable apportionment.

(3) Income for any taxable year derived from interest, dividends, rents, royalties, income from the sale of real property, income from the sale of intangible personal property, income from the sale of assets other than capital and income from a business or sources other than those hereinbefore referred to, which is fairly attributable to the trade or business carried on or engaged in within the District, or which is derived from sources within the District, shall be allocated to the District. If the trade or business herein referred to is carried on or engaged in both within and without the District, that portion of the income from trade or business to be apportioned to the District shall be such percentage of the total of such income as the aggregate of such income or charges for work done or costs of work done in the District bears to the aggregate of such income or charges for work done or costs of work done by the taxpayer everywhere. The Assessor is authorized to use the aggregate of "income" or the aggregate of "charges" or the aggregate of "costs" with respect to such income if in his opinion it will produce an equitable apportionment.

Sec. 10.2-(d). Allowable Deductions. No deductions may be taken which are applicable to income not subject to tax or income which is exempt under the

Act. Where part of any income is apportioned to the District, the deductions applicable thereto and allowable as such under Sec. 3(a) of Title III shall be apportioned on the same basis as that used in apportioning such income, unless, in the opinion of the Assessor, such deductions should be allocated in whole or in part. In the case of corporations and unincorporated businesses, the deductions provided for in Sec. 3(a) of Title III shall be allowable only to the extent that they are connected with income fairly attributable to the trade or business carried on or engaged in within the District and from District sources.

APPENDIX B

Small Loan Laws

FLORIDA

Small Loan Law
Chapter 516, Florida Statutes,
as amended by Chapter 57-201 (1957)

GEORGIA

Georgia Industrial Loan Act (1955)
Title 25, Sections 301 to 324
Georgia Code Annotated

KENTUCKY

Kentucky Small Loan Act
Kentucky Revised Statutes 288.010
et seq. (1942)

LOUISIANA

The Louisiana Small Loan Law
Title 6, Louisiana Revised Statutes
of 1950; Chapter 7, Small Loans

MARYLAND

Uniform Small Loan Law
Article 58A. Annotated Code of
Maryland (1957)

OHIO

Laws of Ohio relating to Small Loans.
Revised Code of Ohio, Sections 1321.01
to 1321.99, inclusive (1954)

PENNSYLVANIA

Small Loan Act.
Act of Assembly No. 432, approved
June 17, 1915, Pamphlet laws 1012,
as amended by Act No. 189 approved
June 4, 1919, Pamphlet laws 375,
as amended by Act No. 268, approved
May 28, 1937, Pamphlet laws 989 and
as amended by Act No. 40, approved
June 2, 1953, Pamphlet laws 262

SOUTH CAROLINA

Small Loan Companies
Title 8, Section 701-796 Code of
Laws of South Carolina (1962)

TEXAS

Laws of the State of Texas relating
to Loan and Brokerage Companies (1955)
Article 1524a, Revised Civil Statutes
of Texas

VIRGINIA

Virginia Small Loan Act
Code of Virginia 1950, Sections 6-274
et seq.

WEST VIRGINIA

Small Loan Law of West Virginia 1933
Chapter 47, Article 7a Code of West
Virginia

REPLY BRIEF FOR PETITIONER

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,273

STATE LOAN AND FINANCE CORPORATION, (SUCCESSOR BY MERGER TO LINCOLN SERVICE CORPORATION), *Petitioner,*

v.

DISTRICT OF COLUMBIA, *Respondent.*

On Petition for Review of the Decision of the District of Columbia Tax Court

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REPLY BRIEF FOR PETITIONER

The brief for the respondent has wholly failed to meet or respond to the points set forth in the brief for the petitioner. Rather, the respondent has ignored the points made by petitioner's brief and has merely restated the holding of the Tax Court's opinion.

I

Reply to Respondent's Argument That Petitioner, as Well as Its Subsidiaries, Are Commercially Domiciled in the District

1. The first argument of the respondent is that the petitioner, as well as its subsidiaries, is commercially domiciled in the District of Columbia. It should be clearly understood at the outset that the petitioner concedes and has always admitted that it was commercially domiciled in the District of Columbia. This is the reason it filed a tax return. It conducts its business both within and without the District of Columbia. Petitioner has never questioned that it was commercially domiciled in the District of Columbia. The issue at this point is whether the petitioner's subsidiaries are commercially domiciled in the District of Columbia so that the dividend and interest income received from its subsidiaries "were income from sources within the District." The brief for the respondent in arguing that the petitioner, as well as its subsidiaries, is commercially domiciled in the District, confuses the issue by attempting to have the subsidiaries placed in the same factual category as petitioner.

2. The argument of respondent and the effect of the Tax Court's opinion is to hold that by reason of the activities of the petitioner in rendering services to the subsidiaries (for which it was paid a fee, the amount of which is not in dispute), the subsidiaries are commercially domiciled in the District. The facts pointed out in petitioner's original brief show that the petitioner's subsidiaries conducted their business wholly without the District and are not commercially or otherwise domiciled within the District. If the petitioner's subsidiaries are not domiciled in the District of Columbia, the dividend and interest payments made by them to the petitioner are not income from sources within the District.

3. If petitioner's subsidiaries are commercially domiciled in the District, then inquiry must be made as to the

effect this will have on petitioner's tax liability. If the subsidiaries are commercially domiciled in the District, they are taxable in the District and inter-company dividends received by petitioner from its subsidiaries "shall not be considered as income from sources within the District." (See Argument IV, Pet. Br. pp. 39-41)[1]

The Tax Court's opinion states that the petitioner's subsidiaries are commercially domiciled in the District. The Court then, however, does not attempt to subject the income of the subsidiaries to District taxation, but only to subject the interest and dividends paid by them to the petitioner to District taxation.

This conclusion cannot follow from a finding of commercial domicile. Even assuming the subsidiaries are commercially domiciled, they would be subject to the District tax and their income subject to apportionment. Whether or not they are commercially domiciled cannot affect the tax position of petitioner because if the subsidiaries are commercially domiciled, intercorporate dividends between companies subject to District tax are not considered as income from within the District. If they are not commercially domiciled, clearly the dividends are from sources without the District. In either event, the dividends are not subject to District of Columbia tax.

4. Respondent's position is that one hundred per cent of the petitioner's dividend and interest income received from its subsidiaries is subject to tax under the District of Columbia Income and Franchise Tax Act, even though such income was generated by the subsidiaries whose small loan business is conducted wholly without the District. This result must fail, however, for the following reasons:

(1) Even if subject to tax, the District of Columbia Income and Franchise Tax Act would require the apportionment of this income, based on the total activities producing

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[1] The Brief for Respondent fails to reply to Argument IV, Pet. Br. pp. 39-41.

it, within and without the District, which the Tax Court has failed to do; and

(2) Commercial domicile cannot be invoked to subject income derived from interstate commerce or commerce wholly in other states to be taxed wholly within the District of Columbia.

Under § 47-1580(a) of the District Code, if the trade or business of any corporation is carried on or engaged in both within and without the District, the net income is deemed to be from sources within and without the Distirct, and the portion thereof subject to tax shall be determined under regulations prescribed by the Commissioners. Under the Regulations, § 10.2-(c)(2), where income is derived from work done or services performed, the proper formula is to allocate to the District only such portion of income as the aggregate charges for or cost of such work done and services performed in the District bears to the aggregate of such charges for or cost of work done and services performed by the taxpayer everywhere.

An examination of the cases relied upon by the respondent shows that the commercial domicile theory was not invoked under circumstances similar to those in the case at bar. *Wheeling Steel Corporation* v. *Fox* (1936), 298 U.S. 193, 56 S. Ct. 773, 80 L. ed. 1143, involved an ad valorem property tax laid by West Virginia upon accounts receivable and bank deposits of the taxpayer. The Court very carefully pointed out the nature of the tax by stating the following:

> "First.—The tax is not a privilege or occupation tax. It is not a tax on net income. See Hans Rees' Sons v. North Carolina, 283 U.S. 123, 133, 75 L. ed. 879, 904, 51 S. Ct. 385. It is an ad valorem property tax. We have held that it is essential to the validity of such a tax, under the due process clause, that the property shall be within the territorial jurisdiction of the taxing state. * * *"

To the same effect: *First Bank Stock Corporation* v. *Minnesota* (1937), 301 U.S. 234, 57 S. Ct. 1061, 81 L. ed. 1061.

Memphis Natural Gas Co. v. *Beeler* (1942), 315 U.S. 649, 62 S. Ct. 857, 86 L. ed. 1090, cited at page 29 of Brief for Respondent, involved a tax imposed by Tennessee on all foreign and domestic corporations doing business for profit in the state. The tax was an annual excise tax of 3% of the net earnings for their preceding fiscal year arising from business done wholly within the state, excluding earnings arising from interstate commerce. The Court pointed out that the taxpayer was taxed only upon the net earnings justly attributable to Tennessee and said:

> "Taxpayer's contribution to the joint undertaking with the Memphis company for the distribution of gas to local consumers, and its activities at its Memphis general office in supplying gas to be distributed for the joint account as required by the Memphis company and in safeguarding and securing payment of its share of the profits, went beyond the mere sale, to a distributor, of gas in interstate commerce. It also constituted participation in the business of distributing the gas to consumers after its delivery into the service pipes of the Memphis company. • • • [citing cases] Since it was competent for the state to tax such business done within it, it was competent to measure the tax by the net earnings of the business as well as by the capital employed. See Southern Natural Gas Corp. v. Alabama, supra (301 U.S. 156, 157, 81 L. ed. 975, 976, 57 S. Ct. 696)
>
> • • • • • •
>
> • • • There is no contention or showing here that the tax assessed is not upon net earnings justly attributable to Tennessee. • • •"

Petitioner does not quarrel with the *Memphis* case. Petitioner admits it is taxable under the District of Columbia Franchise Tax Act. The issue here is what is the proper base for taxation.

Respondent (Br. pp. 24-26) relies heavily upon the case of *Calvert, et al.* v. *Humble Oil & Refining Company* (Ct. Civ. App.), decided May 11, 1966, 404 S.W. 2d 147. This case is readily distinguishable from the case at bar in that

the issue there involved was the determination of an apportionment factor and not what income constituted a part of the tax base. The Texas statute involved in the *Humble* case imposes a franchise tax measured by a corporation's total capital, surplus and long-term debt, apportioned to the State of Texas. The apportionment ratio is a fraction, the numerator of which is the gross receipts from business done within Texas, and the denominator of which is the gross receipts from the corporation's entire business. The statute defines the term "gross receipts from its business done in Texas" to include, among other items, "(d) All other business receipts within Texas." This case merely holds that dividend and interest income received by Humble in Texas, whatever the location of the payor, comes within the term "All other business receipts within Texas." It does not hold that interest and dividend income, from whatever source, is taxable in Texas.

The cases relied upon by the respondent show that the commercial domicile theory has not been invoked to cause unapportioned net income derived from interstate commerce or commerce in other states to be taxed wholly within one state. The result produced by the Tax Court's decision is to attribute to the District an arbitrary and unreasonable high proportion of petitioner's total income, and is unauthorized by the Franchise Act and violative of the Commerce and Due Process Clauses of the Constitution.

II

Reply to Respondent's Argument That Lincoln Was Engaged in Business Solely Within the District

Respondent argues (Br. pp. 32-33) that petitioner was engaged in business solely within the District of Columbia and therefore, income received by petitioner from its subsidiaries is fully taxable by the District. This argument is contrary to the facts and the holding of the Tax Court. (J.A. 41-43) The argument is merely an assertion and is not spelled out in detail.

The facts are that Lincoln operated both within and without the District of Columbia. The services for which the administrative fees were paid were performed partly within and partly without the District. These services were performed by supervisors employed by Lincoln who advised the personnel of the subsidiaries and reported to Lincoln. The supervisors had offices or were headquartered in the states in which the small loan subsidiaries were located. Each supervisor supervised 8 to 10 small loan offices. The supervisors would visit each office, investigate all loans that had been made since the last visit, go over with the manager of the subsidiary its activities, and review what had been done and try to correct any errors that had been made. In addition, the supervisors trained and instructed the other personnel in the subsidiary's office. The supervisors would visit the office of each subsidiary about every 6 or 8 weeks. Practically all of the services rendered by the supervisors to the subsidiaries were rendered outside the District of Columbia. (J.A. 82-84, 91-92)

In view of these facts and the holding of the Tax Court, it must be concluded that the petitioner was engaged in business both within and without the District of Columbia and not solely within the District.

Respectfully submitted,

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BRIEF FOR RESPONDENT

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,273

STATE LOAN AND FINANCE CORPORATION
(SUCCESSOR BY MERGER TO LINCOLN
SERVICE CORPORATION),

Petitioner,

v.

DISTRICT OF COLUMBIA,

Respondent.

ON PETITION FOR REVIEW OF A DECISION OF THE
DISTRICT OF COLUMBIA TAX COURT

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QUESTIONS PRESENTED

In the view of counsel for respondent, the questions presented are:

1. Are not corporations "commercially domiciled" in the District for purposes of District franchise tax when (1) all officers of the corporations are located in the District where they perform all their corporate duties, (2) the corporations have made the District the actual seat of their corporate government where virtually all the corporate records and book-keeping are maintained and where all purchasing, printing, and advertising services are performed, and (3) the only corporate activity performed outside the District is that of making small loans to individual borrowers?

2. Even assuming, arguendo, that Lincoln Service Corporation's subsidiaries are not commercially domiciled within the District, is not the income received by Lincoln from its subsidiaries still fully taxable under the District of Columbia Income and Franchise Tax Act of 1947, as amended, for the reason that Lincoln is engaged in business solely within the District of Columbia?

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FOR THE DISTRICT OF COLUMBIA CIRCUIT

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BRIEF FOR RESPONDENT

COUNTER-STATEMENT OF THE CASE

Petitioner, State Loan and Finance Corporation (successor by merger to Lincoln Service Corporation), is a Delaware Corporation doing business in the District of Columbia. Lincoln Service Corporation (hereinafter Lincoln) and also a Delaware Corporation merged with petitioner on September 16, 1959, which assumed all assets and liabilities of Lincoln (J.A. 21). During the taxable periods here involved Lincoln had executive offices in the District of Columbia (J.A. 22).

Lincoln, which owned a majority of the stock in approximately 105 small loan corporations located throughout the country, loaned money, rendered management services to, and received interest and dividends from such subsidiary small loan corporations (J.A. 21-22). These subsidiaries were engaged in the business of making small loans to

individual borrowers in various states. Each subsidiary was incorporated under the laws of the state in which it engaged in making small loans (J.A. 22, 81). Lincoln supplied all management services to its subsidiaries and in return charged and received therefrom substantial sums for such services. The management services were performed by personnel designated as supervisors, who were employed by Lincoln to supervise the personnel of the operating subsidiaries. Generally, the supervisors had offices or were headquartered in the states in which the small loan subsidiary corporations made loans. Eight to ten small loan offices were under a supervisor's jurisdiction and he visited each office periodically. During such visits, he reviewed, with the manager of the particular subsidiary he was visiting, all loans that had been made since his last visit, and other activities of the subsidiary. The supervisor also trained and instructed the personnel in the subsidiary loan offices (J.A. 82-84, 91-92).

Lincoln through its corporate officers, who were also officers of the subsidiary, and through other employees, performed for the subsidiaries accounting services, purchasing services, advertising services, saw to the printing of necessary forms, the keeping of the books and records of all of the subsidiaries in its office in the District of Columbia, the preparation of the subsidiaries' income tax returns, and made all management decisions (J.A. 83-84, 90).

Lincoln's president, Ralph G. Blasey, devoted practically all of his time and effort to the over-all supervision of Lincoln's subsidiaries, being directly in charge of rendering management services and seeing that these services were properly carried out (J.A. 17; Stipulation ¶ 4(b)). Senior vice-president, Frank C. Hallowell, during the fiscal year ended June 30, 1958, assisted the president and devoted all of his time and effort in the same manner as did the president (J.A. 17; Stipulation ¶ 4(c)).

Mr. Thornton Burnet, vice-president and secretary of Lincoln, devoted a large part of his time to long-term financing and to the purchasing of supplies and advertising. Approximately 80 per cent of Mr. Burnet's time was devoted to Lincoln, the remaining 20 per cent to supervision of Lincoln's subsidiaries (J.A. 17; Stipulation ¶ 4(d)).

During the taxable periods involved, the president of Lincoln was also vice-president of each of Lincoln's subsidiary corporations. Thornton Burnet, vice-president of Lincoln, also held the office of assistant treasurer and assistant secretary in all of Lincoln's subsidiaries (J.A. 17). Members of the board of directors of Lincoln also served on the several boards of directors of Lincoln's subsidiaries (J.A. 22).

Mr. Charles Delmar, Chairman of the Board of Lincoln, was also president of each subsidiary and served on the board of directors of each of the subsidiaries. All of the meetings of the board of directors of Lincoln and the board of directors of each of the subsidiaries were held in the

District of Columbia offices of Lincoln (J.A. 89-90, 131). Oscar C. Mitchell, vice-president and treasurer of Lincoln, devoted most of his time to the day-to-day short-term bank borrowing, preparation of stockholder's dividend checks and the management of Lincoln Service Corporation's bank accounts. He also handled subsidiary borrowings from Lincoln. It is estimated that 75 per cent of Mr. Mitchell's time was given to supervision of the subsidiaries and 25 per cent of his time to Lincoln's other affairs (J.A. 18; Stipulation ¶ 4(e)). Lincoln's comptroller was in charge of all the bookkeeping for Lincoln and its subsidiaries. He devoted approximately 95 per cent of his time to the supervision of the books and records of the approximately 105 subsidiaries (J.A. 18; Stipulation ¶ 4(f)). In addition, Lincoln had twenty employees in the District of Columbia including secretaries, bookkeepers, clerks, receptionists and messengers. The largest number of these employees were bookkeepers and clerks. Such employees devoted approximately 80 per cent of their time to the affairs of the subsidiaries (J.A. 18; Stipulation ¶ 4(h)). The officers of the subsidiaries received no salaries therefrom, but compensation by way of director's fees were paid by each subsidiary to its directors in the District.

Each subsidiary loan office was headed by a manager who was clothed with authority to manage the day-to-day operations of that particular

office, including the hiring and firing of the personnel below him in that office. In turn the small loan corporations were supervised by supervisors employed by Lincoln. Each supervisor had approximately eight to ten small loan offices under his jurisdiction which he periodically visited and reported to Lincoln (J.A. 83, 118-119).

Lincoln, through its review of its supervisors' reports, analyzed the day-to-day operation of each of the subsidiaries, and if a management decision was made that a particular subsidiary was not functioning in a manner that was considered by Lincoln to be a proper manner, a supervisor was dispatched to correct the operation of that subsidiary. This corrective process generally followed one of three courses; namely, to point out to the manager of the subsidiary the error or errors that were being committed and, if this was not sufficient, to appoint a new manager or, if neither of the two above-described procedures was adequate, the office was discontinued (J.A. 68, 83). Lincoln maintained a general outline of procedures to be followed by the subsidiary in making loans. This outline pointed out certain factors that were to be taken into consideration by the manager of the subsidiary in determining whether a loan should be made in an individual case (J.A. 69, 123). A manual was also provided by Lincoln to assist the managers of the various subsidiaries in making loans (J.A. 69).

All original loan records for individual borrowers were kept at the subsidiary's small loan office, but a daily accounting report was sent to Lincoln. This report showed the total loans made for the day, the money on hand, the address and name of the borrower, the terms of the loan, and the amount of money that had been loaned to each individual borrower. The expenses of the particular office, the total amount of loans made and salaries paid that day, as well as the rental expenses and any other expenses incurred, were also included in this report.

Generally speaking, each subsidiary leased its own office space in the city or town where it was located, the lease agreements being signed by officers of the subsidiaries who were also officers of Lincoln (J.A. 69).

Each month the subsidiaries paid to Lincoln interest on loans made to them by Lincoln and certain other administration fees. The amount of interest and the administration fees were determined by Mr. Delmar, Chairman of the Board of Lincoln, president of the subsidiaries, and a member of the board of directors of each of the subsidiaries (J.A. 69, 89). The absolute control maintained by Lincoln over its subsidiaries is best illustrated by the colloquy between the Tax Court and Lincoln's witness, Thornton W. Burnet, vice-president and secretary of Lincoln:

"THE COURT: When that amount [interest on loans, administration fees, and dividends] was determined, who did Mr. Delmar act for, the Lincoln Service Corporation or the subsidiary?

"THE WITNESS: I can't answer that question, sir, how he determined which hat he wore when he made a decision, whether he was wearing a hat of the chairman of Lincoln Service Corporation or the president of the subsidiary; I don't know.

"THE COURT: Is that true of all policies?

"THE WITNESS: Policies which would affect both Lincoln Service Corporation and the subsidiary of this nature." (J.A. 131.)

The officers and directors of the subsidiaries did their work for the subsidiaries in the District of Columbia (J.A. 17-18, 22, 133).

During the taxable year ended June 30, 1958, Lincoln received 22 dividends from its subsidiaries in the total amount of $698,890.14. Lincoln, during the taxable period ended March 16, 1959, received 18 dividends from its subsidiaries totalling $700,159.00. For the most part these dividends were declared at board of directors meetings held in the District. The payment of the dividends so declared was effected in the manner set out, in pertinent part, in the Tax Court's Findings of Fact Number 24, as follows: (J.A. 69)

"The president and other officers and the directors of a particular subsidiary were familiar with its financial condition because of the management in the District of Columbia. If the subsidiary had an operational surplus the president of the subsidiary [in each case, Mr. Delmar, Lincoln's Chairman of the Board of Directors] would determine the amount of dividend that should be declared by the subsidiary. A meeting of its directors was held in Washington, D.C. at which the dividend was declared. The payment of the dividend was effected by the following steps or procedure. A check drawn on an account of Lincoln in Riggs National Bank, Washington, D.C. in the amount of the declared dividend was deposited in an account in the name of two joint agents for all the subsidiaries in the National Savings and Trust Company, in Washington, D.C. The treasurer of the particular subsidiary in Washington then drew a check or checks on the joint agents' account in the amount of the declared dividend (identified as one paying the dividend of the particular subsidiary) in favor of Lincoln and the minority stockholders, if any, and delivered the check to Lincoln and the minority stockholders, if any." (Court's footnote omitted.)

On October 9, 1958, Lincoln filed with the District its corporate franchise tax return for the taxable year ended June 30, 1958, showing a tax due in the amount of $7,430.52. In determining its net income that was taxable by the District, Lincoln used an apportionment factor which was arrived at by dividing Lincoln's total expenses incurred everywhere into the total expenses incurred by it in the District. It did not report on its tax return filed with the District any of the dividends received by it from its subsidiaries (J.A. 24, 26, 87-88; Petitioner's Exhibit 1).

On June 12, 1959, Lincoln filed with the District its corporate franchise tax return for the taxable period beginning July 1, 1958, and ending March 16, 1959. In preparing the return it followed the same procedure as it had in preparing its return filed on October 9, 1958 (J.A. 24, 26, 87-88; Petitioner's Exhibit 2).

The District assessed deficiencies in tax and interest for the taxable periods here involved, which deficiencies were paid by Lincoln on March 21, 1964. On May 22, 1964, Lincoln filed a petition with the District of Columbia Tax Court, appealing from the deficiency assessments. The District, on June 6, 1964, filed an answer with the Tax Court seeking an increase in the taxes previously assessed against petitioner for the taxable periods involved on the ground that Lincoln, contrary to its claim that it was during the tax years involved engaged in business both within and without the District was, in actuality, engaged in business wholly within the District, and that all of its income should be taxable by the District. In the alternative, the District contended that if Lincoln was engaged in a trade or business within or without the District during the taxable periods in controversy, it nevertheless derived all of its income from trade or business activities conducted by it within the District.

After hearing the case on the merits, the Tax Court on January 19, 1965, entered its Findings of Fact and Opinion, holding that petitioner's

subsidiaries were commercially domiciled in the District (J.A. 20-44). On February 3, 1965, petitioner filed a motion for rehearing and reconsideration on the ground "that the commercial domicile issue was not raised prior to the trial and hearing of this case and that, further, even upon the incomplete record the conclusion that petitioner's subsidiaries were commercially domiciled in the District was erroneous" (J.A. 45-46). The District did not oppose this motion. The Tax Court on February 16, 1965, entered an order (together with a memorandum) granting petitioner's motion subject to the limitation that the rehearing and reconsideration relate solely to the issue of commercial domicile of the subsidiaries of the petitioner and, further, granted leave to respondent to file an amendment or substitution to a portion of its answer wherein respondent had made specific allegations relating to the domicile of the subsidiaries of the petitioner (J.A. 47-49). On February 24, 1965, the District filed an amendment to its original answer (J.A. 49-50).

The Tax Court on March 7, 1966, held a rehearing and thereafter entered "Findings of Fact and Opinion on Rehearings" (J.A. 66-72). On June 3, 1966, the Tax Court entered its decision determining that the deficiencies as assessed by the District and collected from the petitioner were validly assessed and, in addition, determining that additional taxes were due as follows: for the fiscal year ended June 30, 1958, $4,015.31,

and for the period July 1, 1958 to and including March 16, 1959, $8,600.26 (J.A. 75). On June 6, 1966, petitioner filed a Petition for Review of the Decision of the Tax Court, entered June 3, 1966 (J.A. 76).

SUMMARY OF ARGUMENT

The Tax Court found, as a fact, that each of Lincoln's subsidiaries had a commercial domicile in the District. In making this finding, the Tax Court was very careful to point out that this was not a case " *** where the books and records happened to be kept, or where directors' and stockholders' meetings only were held, or merely where some of the officers or stockholders reside. ***" but, to the contrary, was a case where "the important part of the management and the control and direction [of the corporation] were carried on in the District of Columbia." The ascertainment of the activities which will cause a foreign corporation to be commercially domiciled within a given jurisdiction so as to subject such a corporation to taxation within that jurisdiction is a factual one.

A review of the Supreme Court's decisions and of other appellate court decisions leads to the conclusion that commercial domicile means the place where a corporation manages and directs its business; i.e., where the corporation has made a given location the actual seat of its corporate government. In the present case virtually all records and bookkeeping of Lincoln's subsidiaries were in the District. All of the

subsidiaries' officers were located in the District. All procurement and printing services were performed for the subsidiaries in the District. The subsidiaries' officers performed, in the District, all of the various vital management services of the subsidiaries without which the subsidiaries could not have operated. In short, every corporate and business activity of the subsidiaries, except the actual lending of money by the subsidiaries to individual borrowers, was carried on in the District. These activities clearly established that Lincoln and its subsidiaries maintained commercial domicile in the District of Columbia.

Even assuming that Lincoln's subsidiaries were not commercially domiciled in the District, the income received by Lincoln from its subsidiaries was still fully taxable by the District since Lincoln itself was engaged in business solely within the District.

Thus under either alternative the Tax Court's decision was clearly correct and ought to be affirmed.

ARGUMENT

I. PETITIONER AS WELL AS ITS SUBSIDIARIES ARE COMMERCIALLY DOMICILED IN THE DISTRICT AND ARE RECEIVING INCOME FROM SOURCES WITHIN THE DISTRICT

The corporation franchise tax imposed by § 47-1580a, D.C. Code, 1961, is imposed upon corporations for the privilege of engaging in a trade or business within the District and receiving income from sources within the District. The Tax Court found, as a fact, that the "commercial domicile" of Lincoln and its subsidiaries was the District and for that reason the dividend and interest income received from the subsidiaries by Lincoln "were income from sources within the District ***."

The words "commercial domicile" and "doing business" have been construed in many cases to have a synonymous meaning. However, no all-embracing rule can be laid down as to what constitutes carrying on or doing business or what exact activities will make a foreign corporation commercially domiciled within a given jurisdiction so as to subject such a corporation to taxation within that jurisdiction. Connecticut General Life Insurance Co. v. Johnson, 303 U.S. 77. The phrase "doing business", when used in a tax statute, is given a broader meaning. C.T.H. Corporation v. Maxwell, 212 N.C. 608, 195 S.E. 36. A landmark case involving the question of "commercial domicile" as it relates to income taxation is

Cargill, Inc. v. Spaeth, 215 Minn. 540, 10 N.W.2d 728, 733. In that case the Court stated:

> " * * * Where a corporation, organized under the laws of one state, transacts no business there and establishes its principal office in another, where it manages and directs its business, it acquires a commercial domicile there, in virtue of which it is subject to taxation there upon its intangibles, even though its business may extend into other states. * * *" (Emphasis supplied.)

Petitioner argues there was no significant "commercial activity" conducted in the District by the subsidiaries. This argument is grounded on the premises that commercial activity as it relates to the present case has to do simply with the business conducted by Lincoln's subsidiaries outside the District; that is, the making by these subsidiaries of small loans in those localities where the subsidiaries operated.

The whole theory of the power of a state to impose a tax on the income of a foreign corporation is dependent upon the corporation's presence within the taxing state. It has been held this presence is sufficient when a corporation has acquired a "commercial domicile" within the taxing jurisdiction. Cf. Southern Pacific Co. v. McColgan, 68 Cal.App.2d 48, 156 P.2d 81.

In arguing that Lincoln's subsidiaries conducted no significant commercial activity in the District petitioner has placed much reliance upon Consolidated Title Corporation v. District of Columbia, D.C.T.C.

Docket No. 1650, affirmed 107 U.S.App.D.C. 221, 275 F.2d 335.

There the Tax Court stated:

> "* * * All that the petitioner did was to exist as a corporation, hold the corporate stocks of the three operating subsidiary title companies, receive and distribute to its stockholders income represented by the dividends on these stocks, pay nominal salaries to its officers and hold meetings of its stockholders, directors, and perhaps, officers. None of these activities amounted to even a 'commercial activity' or 'any trade or business', (citing cases) * * *."

That Court also held the source of dividend income to be the residence of the payor. Petitioner at page 16 of its brief filed with this Court refers to the holding of the Tax Court in Consolidated as follows: "* * * such activities did not amount to 'commercial activity' or 'any trade or business.' * * * " The factual situation present in this case as it relates to Lincoln's subsidiaries is not analygous to that of the corporations involved in Consolidated Title. The difference is a factual one, and the Tax Court found in its Finding of Fact 3(b), entered January 19, 1965, that:

> "(b) Each of the subsidiaries had a commercial domicile in the District of Columbia."

Lincoln's subsidiary loan corporations, while incorporated in other jurisdictions, did in fact conduct a substantial amount of business in the District. The president of Lincoln was also the vice-president of each of its loan subsidiaries. Another vice-president of Lincoln held

the office of assistant treasurer, assistant secretary, or secretary of each of the subsidiaries. In addition, some of the members of the board of directors of Lincoln served on the boards of directors of the subsidiaries. Moreover, and most important, the Chairman of the Board of Lincoln, Mr. Charles Delmar, was president of each of the subsidiaries and was a member of and actively served on the boards of directors of all the subsidiaries. All meetings of the board of directors of Lincoln and of the subsidiaries were held in the offices of Lincoln in the District. Directors fees were paid to the directors by the subsidiaries in the District for meetings held in the District. Lincoln's officers and employees performed in the District the various vital management services of the subsidiaries without which the subsidiaries could not have operated. Virtually all of the records and bookkeeping functions of the subsidiaries were in the District. Moreover, employees of Lincoln performed in the District, on behalf of the subsidiaries, substantial accounting services, purchasing services, and advertising services. The procurement of the printing of all the various forms needed by the subsidiaries was performed in the District. All of the subsidiaries' income tax returns were prepared by Lincoln at its office in the District. The books and general ledgers of all the subsidiaries were kept and maintained in the office of Lincoln in the District.

No records for individual borrowers were kept in the offices of Lincoln. But each day there was sent to Lincoln by the manager of each subsidiary an accounting report which showed the loans made that day, the name, address of the borrower and the terms of the loan, as well as the amount of money involved. This accounting report also reflected the interest income, the principal income, and any income that might be received from P & L account.[1] The same report showed the expenses of the particular office, all money paid out, the total amounts of loans, the salaries, rent and all expenses that had been paid that day. It also showed the opening cash and closing cash, the amount of money in the local bank and how much money was on hand. In addition other general statistical information such as the loan balance and the status of all loans was also sent to Lincoln by the subsidiaries.

A separate bank account for each subsidiary was maintained in the city in which the office was located. The manager and cashier of the particular subsidiary and the treasurer of the subsidiary located in the District had authority to draw on the separate bank accounts. All of the subsidiaries maintained a joint bank account in the District in the name of their two agents.

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1. Although not further identified (see J.A. 67 and 126), a "P & L" account was, apparently, an account maintained for bad debts, with a corresponding credit to a reserve for bad debts.

Every corporate and business activity of the subsidiary, except the actual lending of money, was carried on in the District. Mr. Charles Delmar, the chief executive officer of Lincoln and president of the subsidiaries, determined all policy and management questions affecting Lincoln and the subsidiaries. This is best illustrated by the colloquy between the Tax Court and the witness Mr. Burnet, vice-president and secretary of Lincoln:

> "THE COURT: When that amount was determined, who did Mr. Delmar act for, the Lincoln Service Corporation or the subsidiary?
>
> "THE WITNESS: I can't answer that question, sir, how he determined which hat he wore when he made a decision, whether he was wearing a hat of the chairman of Lincoln Service Corporation or the president of the subsidiary; I don't know.
>
> "THE COURT: Is that true of all policies?
>
> "THE WITNESS: Policies which would affect both Lincoln Service Corporation and the subsidiary of this nature." (J.A. 131.)

It is true that managers supervised the day-to-day operations of the small loan offices where the business of making small loans to individual borrowers was carried out. In reality, however, it was Lincoln's supervisors who actually controlled the lending policies and procedures of the subsidiaries through periodic examinations of the subsidiaries' lending policies and procedures. Moreover, the manager of the subsidiary

office had absolutely no control over the amount of the dividend paid by the subsidiary to Lincoln, the amount of interest charged for the money loaned to the subsidiary by Lincoln, or the management fee charged by Lincoln for the services it performed for the subsidiary.

Lincoln loaned all the money to the subsidiaries used by them in their individual small loan business. The terms for these loans were worked out by the subsidiaries and Lincoln. However, the fact is that Mr. Delmar, the chief executive officer of Lincoln and president of each of the subsidiaries simply dealt with himself; that is, he made all the decisions.

As previously pointed out the president of Lincoln Service Corporation was also the vice-president of each of the loan subsidiaries. Paragraph 4(b) of the stipulation describes the duties of the president of Lincoln and the amount of time which he spent on his various duties. Paragraph 4(b) reads as follows:

> "The President of Lincoln, Ralph G. Blasey, devoted practically all of his time and effort to the over-all supervision of Lincoln's subsidiaries. He was in charge of rendering the management service and seeing that it was properly carried out. It is estimated that 95 o/o of his time was given to supervision of the subsidiaries and 5 o/o to the other affairs of Lincoln."

A case referred to supra and discussed at page 27 of petitioner's brief as "the accepted rule on 'commercial domicile' " is that of

Cargill, Inc. v. Spaeth which states quite clearly that "commercial domicile" means that place where a corporation manages and directs its business. From the facts recited above as they relate to the management of the petitioner and its subsidiaries it is beyond dispute that the management and direction of the petitioner and of its subsidiaries was in the District. All of the vital decisions of management, without which the small loan companies located in other jurisdictions could not operate, were made here. Certainly, this extensive commercial activity cannot be summarily dismissed as petitioner would do, by the argument that no small loans were made in the District by Lincoln's subsidiaries. Respondent does not and cannot argue that the subsidiaries of Lincoln engaged in the making of small loans in the District. However, this does not, as petitioner contends, mean that no commercial activity was carried on by them in the District.

In Southern Pacific Co. v. McColgan, 68 Cal. App. 2d 48, 156 P. 2d 81, the Court at page 99, said:

> " * * * The true test must be to consider all the facts relating to the particular corporation, * * * and to determine from those facts which state, among all the states involved, gives the greatest protection and benefits to the corporation, which state, among all the states involved, from a factual and realistic standpoint is the domicile of the corporation. That is partially a question of fact and partly a question of law."

Application of the facts to the test laid down in Southern Pacific Co. as well as in Cargill, supra, clearly shows beyond question that Lincoln's subsidiaries had their principal office in the District and it was here that the subsidiaries through their own officers and through employees of Lincoln managed and directed their business. Thus, the test for commercial domicile is met.

Petitioner's brief cites numerous cases which show that minimal business or commercial contacts within a given jurisdiction do not establish the proper criteria for "the doing of business" or for the establishment of a "commercial domicile." Many of these cases have to do with the question of service of process on a foreign corporation. The Court of Appeals in Goldberg v. Southern Builders, 184 F.2d 345, 347, pointed out the distinction between jurisdiction for purposes of service of process and jurisdiction for the purpose of taxation. The Court said:

> "The term 'doing business' is not one possessed of but a single meaning in law. It is used in connection with many different situations and must be characterized and defined according to the context. Thus, what constitutes doing business for purposes of taxation by a state, may be a very different regulation by a state, or for purposes of thing [sic] from what constitutes doing business for purposes of process and the subjection of a foreign corporation to the jurisdiction of local courts."

Edwards v. Chile Copper Co., 270 U.S. 452, 455, is a case which turned upon the Supreme Court's determination of what "doing business" meant. There the Court said:

> " * * * In our opinion the plaintiff was liable to the tax. We do not rest our conclusion upon the issue of bonds in the first year or the call loans made in the last, and for the same reasons we cannot let the fagot be destroyed by taking up each item of conduct separately and breaking the stick. The activities and situation must be judged as a whole. Looking at them as a whole we see that the plaintiff was a good deal more than a mere conduit for the Chile Exploration Company. It was its brain or at least the efferent nerve without which that company could not move. The plaintiff owned and by indirection governed it, and was its continuing support, by advances from time to time in the plaintiff's discretion. There was some suggestion that there was only one business and therefore ought to be only one tax. But if the one business could not be carried on without two corporations taking part in it, each must pay, by the plain words of the Act. * * *" (Emphasis supplied.)

Another case in point is that of Flint v. Stone-Tracy Co., 220 U.S. 107, 171 where the Supreme Court, in deciding whether certain corporations were engaged in business, said:

> " * * * 'Business' is a very comprehensive term, and embraces everything about which a person can be employed. Black's Law Dict., 158, citing People v. Commissioner of Taxes, 23 N.Y. 242, 244. 'That which occupies the time, attention and labor of men for the purpose of a livelihood or profit. Bouvier's Law Dictionary, Vol. I, p. 273.
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> "We think it is clear that corporations organized for the purpose of doing business, and actually engaged in such activities as leasing property, collecting rents, managing office buildings, making investments of profits, or leasing ore lands and collecting royalties, managing wharves, dividing profits, and in some cases investing the surplus, are engaged in business within the meaning of this statute, and in the capacity necessary to make such organizations subject to the law." [2]

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2. Cf. Stone v. District of Columbia (1952), 91 U.S.App.D.C. 140, 198 F.2d 601.

In Von Baumbach v. Sargent Land Company, 242 U.S. 503, 514, 516, the Court had to decide whether or not certain corporations were carrying on business within the meaning of the federal corporation tax act. The Court stated:

> " * * * As the tax was there held to be assessed upon the privilege of doing business in a corporate capacity, it became necessary to inquire what it was to do business, and this court adopted with approval the definition, judicially approved in other cases, which included within the comprehensive term 'business' 'that which occupies the time, attention and labor of men for the purpose of a livelihood or profit.'
>
> * * *
>
> "It is evident, from what this court has said in dealing with the former cases, that the decision in each instance must depend upon the particular facts before the court. The fair test to be derived from a consideration of all of them is between a corporation which has reduced its activities to the owning and holding of property and the distribution of its avails and doing only the acts necessary to continue that status, and one which is still active and is maintaining its organization for the purpose of continued efforts in the pursuit of profit and gain and such activities as are essential to those purposes."

The conclusion to be drawn from these cases is that the comprehensive term "business" means that which occupies the time, attention and labor of men for the purpose of livelihood or profit. Certainly, the varied activities of Lincoln and its subsidiaries within the District fall within this category.

A very recent case particularly pertinent to the instant appeal, and which discussed the question of a foreign corporation's commercial domicile and its liability to tax on intangibles, is Calvert, et al. v. Humble Oil & Refining Company, Court of Civil Appeals, Third Supreme Judicial District, Austin, Texas, decided May 11, 1966, 404 S.W.2d 147. In that case Humble, prior to September of 1959, was a domestic corporation with a permit to do business in other states. Subsequent to the September date Humble became a foreign corporation incorporated in Delaware with a Delaware charter and its permit authorized Humble to make loans and investments out of its surplus funds and to deal in securities. It carried on business in 49 states and was qualified to do business in all 50 states. Humble maintained a domiciliary office in Washington, Delaware, and region and division offices in New York City, New Orleans, and Tulsa. During the taxable period in question it received stock dividends and interest. The stock certificates were kept in its office in Houston, Texas, and the notes were located either in Houston or in the offices of the organizational unit which carried the account on its

books. Humble's board of directors' meetings and stockholders' meetings were held in Houston, Texas. All but 16 of the 51 directors and officers resided and worked in Houston, Texas. Those located in Houston included the Chairman of the Board and Chief Executive officer, the President and Director, two Executive Vice-Presidents, the General Counsel and his associate, as well as several other officers. The 16 other officials were stationed in designated regional offices outside Texas.

The Texas franchise tax is a tax upon the privilege of doing business within the state. The privilege, both of domestic and foreign corporations, is measured by the corporation's total capital, surplus, and long-term debt apportioned to the state.

Humble contended that the general common law rule applicable to the taxing of intangibles, i.e., that they are taxable at the owner's domicile or state of incorporation, should be applied to it in this case, since no specific law had been enacted by the legislature to change the general rule. The court found that:

> "* * * The theory of a commercial domicile has been a part of the common law since ancient times in both England and in the United States as an exception to the general rule announced above. See Wheeling Steel Corporation v. Fox, 298 U.S. 193, 81 L.Ed. 1143; First Bank Stock Corporation v. State of Minnesota, 301 U.S. 234, 57 S.Ct. 677 (1937). This theory has also been recognized in Texas as the common law rule. * * *"

The court also found, after a recitation of the facts of this case that:

> " * * * There seems to be no controversy over the fact that Humble's actual corporate headquarters or business or commercial domicile is in Houston, Texas."

In the course of its opinion the court stated the question before it and its answer thereto as follows:

> " * * * Can Humble, a foreign corporation incorporated in the State of Delaware, have a business or commercial domicile in Texas for the purpose of taxation by the State? Are the interest and dividends or intangibles in question, admittedly not taxable by the law and the administrative rulings of the Comptroller prior to 1959, taxable by the law as it was amended in 1959? We answer both of these questions in the affirmative."

The amendment in 1959 provided, in pertinent part, that the term "gross receipt" of a foreign corporation from its business done in Texas should include, among other items,

> "(d) All other business receipts within Texas."

The court, after referring to the amendment, said:

> " * * * We hold that the wording of Section (d) 'all other business receipts within Texas' means business receipts received in Texas is applicable to the intangibles in question thus placing the emphasis on the place of receipt rather than the place of the payor as the law was previously interpreted."

The present case is not one, as the Tax Court pointed out, "where the books and records happened to be kept, or where directors'

and stockholders' meetings only were held, or merely where some of the officers or stockholders reside.* * *" In this case, every corporate and business activity of the subsidiaries, with the exception of the making of small loans, was carried out in the District. Every corporate move of the subsidiaries and all of their policy decisions were made in the District. All dividends from the subsidiaries to Lincoln were declared and paid from the District, and all the subsidiaries' officers carried out their official and corporate duties here.

The Supreme Court's landmark decision in Wheeling Steel Corporation v. Fox, 298 U.S. 193, 211, held that the State of West Virginia could constitutionally impose an ad valorem property tax upon the accounts receivable and bank deposits of the Wheeling Steel Corporation, a Delaware corporation, which was found to be "commercially domiciled" in West Virginia. The general business office of the corporation was in West Virginia. Its general books and accounting records were kept in West Virginia. The Chairman of the Board, President, Treasurer, Secretary, and General Counsel resided in West Virginia. Its stockholders' and directors' meetings were held in West Virginia. The corporation, however, maintained sales offices in various cities and had its principal manufacturing plants located in Ohio. The Supreme Court, recognizing the fact that Wheeling's principal manufacturing plants for the production of steel were located in Ohio, nevertheless found Wheeling to be

commercially domiciled in West Virginia. The offices of Wheeling's plants maintained original detailed accounting records of all of their costs for the production of steel. They made up their own payrolls, and payroll checks were prepared and signed at the various plants where they were distributed to the employees of the plants. The checks were paid with funds on deposit in banks in the localities where the plants were situated. The corporation owned vessels operating on the Allegheny, Ohio, and Mississippi Rivers. Approximately 80 per cent of the monies spent by the corporation in the conduct of its business were spent outside the State of West Virginia. The money thus expended in the conduct of its business was, however, as with Lincoln and its subsidiaries, expended as a result of executive management action taken in West Virginia.

The Court stated:

> "Third.—The Corporation established in West Virginia what has aptly been termed a 'commercial domicile.' It maintains its general business offices at Wheeling and there it keeps its books and accounting records. There its directors hold their meetings and its officers conduct the affairs of the Corporation. There, as appellant's counsel well says, 'the management functioned.' The Corporation has manufacturing plants and sales offices in other States. But what is done at those plants and offices is determined and controlled from the center of authority at Wheeling. The Corporation has made that the actual seat of its corporate government." (Emphasis supplied.)

The taxpayer in Memphis Gas Company v. Beeler, 315 U.S. 649, 652, was a Delaware corporation engaged, during the taxable period in question, in the business of purchasing natural gas in Louisiana and transporting it through its pipelines to plants in Tennessee where it delivered the gas into pipelines of two distributing companies. These distributing companies sold the gas to local customers. The Court, in determining that the corporation had established a "commercial domicile" in Tennessee, said:

> " Taxpayer is licensed by the State of Tennessee to do business there. It maintains a statutory office in Delaware and a stock transfer office in New York City, but conducts no business at either. [It manages] its business from its office in Memphis, Tennessee, where it keeps its accounts, provides for the payroll of employees on its line in Tennessee and other states, and prepares and sends out bills for gas delivered in Tennessee and other states. It has thus established a commercial domicile in Tennessee by virtue of which it is subject to taxation there upon its intangibles, unless such taxation infringes the commerce clause." (Emphasis supplied.)

Ferguson Contracting Company v. Coal & Coke Railway Company, 33 App.D.C. 159, 170, although a case based upon service of process, contains the same threads of reasoning found in both Wheeling Steel and Memphis Natural Gas and comes to the same conclusion as did the Supreme Court in the two above-referred to cases. In Ferguson service of process could only be had upon a foreign corporation in the District if it was doing business in the District. The statute setting up the

necessary provisions for service of process on foreign corporations did not specify what particular actions constituted doing business. In that case the Court said:

> "* * * It is true that the industrial operations of the defendant herein were conducted entirely without the limits of the District of Columbia. It sold no tickets therein for the transportation of persons, and entered into no contracts for the carriage of goods. But it did maintain an office in the city of Washington, in which were to be found, for the greater part of each year, its president, secretary, and treasurer, who there transacted business incidentally relating to the corporate purposes, and important to the success of its industrial operations. Bids for the construction of its road were there opened, considered, and accepted by the managing officers and their assistants. The arbitration out of which this action arose was agreed upon in said office, and the proceedings thereunder were there conducted. These, and other matters relating to the corporate business and management, as shown in the testimony hereinbefore recited, were transacted in said office. It is clear that, if the corporation had maintained an agency in the District for the conduct of a part of its regular industrial operations, it would be doing business therein, within the contemplation of the statute, and service of summons upon such subordinate agent would be effectual to bring the corporation before the District courts.
>
> "For a stronger reason, we think, the maintenance of an office in the District for the performance by the general officers of their duties of management and supervision of the affairs of the corporation amounts to doing business there within the meaning of the Code." (Emphasis supplied.)

These three cases have one common bond. Memphis Gas Company referred to the fact that the corporation managed its business from its office in Memphis. Wheeling Steel places paramount importance on the fact that "the corporation has made [Wheeling, West Virginia] the actual seat of its corporate government." Finally, Ferguson, a District of Columbia case, placed great emphasis upon the maintenance of an office in the District by the Coal & Coke Railway Company for the performance by the general officers of their duties of management and supervision of the affairs of the corporation. Lincoln and all of its subsidiaries are managed and directed from the District of Columbia. The subsidiaries get all of their capital, i.e., the money necessary for them to make small loans in their own localities, from Lincoln. The Chief Executive Officer of Lincoln and the subsidiaries are one and the same person. The Vice-President of Lincoln is also either an Assistant Treasurer, Assistant Secretary, or Secretary of each of the subsidiaries and he is located in the District of Columbia. Lincoln's employees are principally engaged in handling the bookkeeping and accounting necessary for the subsidiaries' operations. Without the employees and officers of Lincoln the subsidiary corporations could not function. The subsidiary corporations' entire brain and nerve center is located in the District of Columbia. When the facts found by the Tax Court are considered in the light of the Supreme Court's cases cited above, it is hard to imagine a clearer case of "commercial domicile."

II. LINCOLN SERVICE CORPORATION WAS ENGAGED IN BUSINESS SOLELY WITHIN THE DISTRICT OF COLUMBIA.

The District of Columbia Income and Franchise Tax Act of 1947, as amended, specifically provides that all the income earned by a corporation operating solely within the District shall be allocated to the District.

Even assuming, arguendo, that Lincoln's Service Corporation's subsidiaries are not "commercially domiciled" in the District, the income received by Lincoln from its subsidiaries is still fully taxable by the District because Lincoln is engaged in business solely within the District of Columbia. The argument of Lincoln that it was engaged in business both within and without the District is based upon "understandings" which it had with its wholly-owned subsidiary corporations by reason of which provided that Lincoln, for specified management fees, would provide the subsidiaries with certain services consisting of the keeping of the books and records in the District of Columbia; the preparation of the subsidiaries' income tax returns; advertising services, and various other office and clerical services; and the furnishing to the subsidiaries, through Lincoln's employees and officers, of advice and assistance.

Lincoln was not, however, engaged in business outside the District, and its employees were not soliciting business for Lincoln

outside the District. All of Lincoln's corporate affairs were conducted in the District even though some of its employees were outside the District.

CONCLUSION

For the reasons stated above, counsel for respondent respectfully requests this Court to sustain, under either of the alternative arguments presented, the decision of the Tax Court.

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PETITION FOR REHEARING EN BANC

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,273

STATE LOAN AND FINANCE CORPORATION
(Successor by merger to Lincoln Service Corporation),

Petitioner,

v.

DISTRICT OF COLUMBIA,

Respondent.

ON PETITION FOR REVIEW OF A DECISION OF
THE DISTRICT OF COLUMBIA TAX COURT

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE LOAN AND FINANCE CORPORATION, (Successor by merger to Lincoln Service Corporation), Petitioner, v. DISTRICT OF COLUMBIA, Respondent.	No. 20,273

PETITION FOR REHEARING EN BANC

Pursuant to Rule 26 of the General Rules of this Court, Respondent District of Columbia respectfully petitions the Court for a rehearing of the above-entitled case before the entire court sitting en banc.

On June 2, 1967, the division of the Court before which this case was presented reversed a decision of the District of Columbia Tax Court and remanded the case to that Court:

> " * * * to enter judgment for the petitioner consistent with this opinion for the refunds due, plus interest, on the taxes paid on dividends and interest income for the taxable periods here involved."

Circuit Judge Fahy, although agreeing with the majority that the interest and dividends earned by the petitioner (Lincoln) were not subject to the franchise tax as "such other net income as is derived from sources within the District," dissented from the majority's

order and concluded that this case should be remanded to the Tax Court for further proceedings saying:

> "* * * There remains for determination the question whether the interest and dividends, or any part thereof, should be used in measuring the franchise tax to be paid on that portion 'of the net income . . . fairly attributable to any trade or business carried on or engaged in within the District.' D.C. Code § 47-1580. And see District of Columbia v. Virginia Hotel Co., 92 U.S.App.D.C. 186, 204 F.2d 390."

Judge Fahy noted in this connection that even the petitioner conceded that some of the interest it earned was taxable by the District of Columbia. In fact, petitioner's attorney stated specifically that Lincoln

> "was engaged in the business of loaning money and rendering management services to the subsidiary corporations which were located in the States of Florida, Georgia, Kentucky, Louisiana, Maryland, Ohio, Pennsylvania, South Carolina, Texas, Virginia and West Virginia."

Speaking of the findings of fact made by the Tax Court, Judge Fahy referred to this Court's opinion in District of Columbia v. Virginia Hotel Co., 92 U.S.App.D.C. 186, 204 F.2d 390 (1953) and pointed out that the Tax Court made no findings of fact or conclusions of law as to whether the interest and dividends, or any part of them, were "attributable to any trade or business carried on or engaged in within the District of Columbia."

In the Virginia Hotel Company case, the Court stated:

> " * * * An examination of the Tax Court's opinion, as well as its findings of fact and conclusions of law, indicates that it did not consider the question whether, under the first clause of the provision of Title X quoted above, the item of interest was 'fairly attributable to any trade or business carried on or engaged in within the District.' * * * "

Because of the lack of findings by the Tax Court in the Virginia Hotel case, the Court remanded the case to the Tax Court for further proceedings not inconsistent with the opinion, as has been suggested by Judge Fahy in this case.

It has, consistently, been the position of the District, in its answer filed in the Tax Court, when it appeared before the Tax Court, and in its brief filed in this Court, that, contrary to petitioner's contention, it was engaged in business solely within the District of Columbia.

In accordance with the District of Columbia Income and Franchise Tax Act of 1947, as amended, petitioner is entitled to an apportionment of its income for District franchise tax purposes only if it should appear that part of its net income was derived as a consequence of business carried on by it both within and without the District. In the absence of multistate business activities, sufficient to subject petitioner to some other jurisdiction, the statute requires that petitioner's entire net income shall be allocated to the District.

Petitioner had its only office in Washington, D.C. in the Woodward Building and its principal business, according to Thornton W. Burnet, Vice-President of State Loan and Finance Management Corporation, was:

> "* * * the raising of funds through the sale of its capital stocks, debentures, borrowings from banks, institutional lenders. After they secured these funds, they would invest them in their operating subsidiaries either by the purchase of the capital stock of the subsidiary, or by lending money. In addition, they rendered various service functions to the subsidiaries." (J.A. 112.)

Petitioner's lending activities, so far as its subsidiaries were concerned, were apparently very simple and informal. A request for money was sent by the manager of a Lincoln subsidiary to Lincoln which thereupon sent the money to the subsidiary. (J.A. 141.) Except for the supervision of the subsidiaries through approximately eight to ten supervisors employed by Lincoln, Lincoln's activities were conducted entirely in the District of Columbia where it had its only office.

Although the principal emphasis of the majority of the Division was directed to the question of the "source" of Lincoln Service Corporation's interest and dividend income, based upon the Tax Court's determination that the corporation had its commercial domicile in the District, the fact is that the business of Lincoln, aside from any supervisory

activities, was the lending of money to the subsidiaries and the investing in stock of the subsidiaries for the purpose of securing income. Such activities were conducted in the District and are comparable, although of a different type, to those involved in Stone v. District of Columbia, 91 U.S.App.D.C. 140, 198 F.2d 601 (1952), wherein this Court held that Mr. Stone, who engaged in purchasing second-trust notes at a discount, was engaged in an "unincorporated business" in the District of Columbia. But here there are no findings of fact or conclusions by the Tax Court concerning this phase of the case. Certainly, it was not the intention of the Congress that a corporation engaged in the District of Columbia in the business of lending money and purchasing the stock of other corporations should be exempt from District of Columbia corporation franchise tax because the borrowers were located outside the District of Columbia or because, as in this case, the corporations whose stock was purchased by Lincoln were located outside the District of Columbia.

The emphasis of the District's statute is on business activities. Thus, if the corporation's business is conducted in the District of Columbia then the corporation is liable to tax in the District of Columbia on the income "fairly attributable" to its District activities. That this was intended by the Congress is evident upon a reading of the proviso of D.C. Code, 1961, § 47-1580 which excludes as income from sources within the District:

> " * * * dividends from a corporation which is subject to taxation under this subchapter, and, in the case of a corporation not engaged in carrying on any trade or business within the District, interest received by it from a corporation which is subject to taxation under this subchapter. * * * "
> (Emphasis supplied.)

And immediately following such proviso in § 47-1580 is the statement that " * * * The measure of the franchise tax shall be that portion of the net income of the corporation *** as is fairly attributable to any trade or business carried on or engaged in within the District ***." It is this provision which is in any event applicable to Lincoln, aside from the question whether, in fact, Lincoln was engaged in trade or business solely within the District of Columbia. Since the Tax Court did not in the first instance consider and resolve these matters, the Division did not have the benefit of the lower court's consideration of the alternative premises for taxability. That these matters were raised by the District of Columbia is, as the majority notes, evident from the District's answer to Lincoln's Tax Court petition wherein the District contended that Lincoln was either engaged in business wholly within the District of Columbia, or alternatively derived all of its income from trade or business activities conducted by it in the District. (J.A. 15.)

Although the majority says that the Tax Court impliedly rejected the District's arguments, the fact is that the Tax Court disregarded the questions raised by the District's original answer and based its conclusions solely upon the question of "commercial domicile", which negated any necessity that the Tax Court proceed further to dispose of the contentions of the District of Columbia as they related to the income derived by Lincoln from its trade or business conducted in the District. Thus, the District's position has never been considered, nor decided by the Tax Court, and it appears incorrect to say that because the Tax Court determined liability upon a "commercial domicile" theory, it, perforce, by implication, concluded that the District's contentions were unsound; otherwise, the District has lost as though by a default when, in fact, it was not responsible for that default.

If demonstration is needed that it was the Tax Court which initiated the theory of "commercial domicile", that fact is demonstrated by the "Motion for Rehearing and Reconsideration" filed by Lincoln after the Tax Court entered its findings of fact and opinion, and by the "Order" of the Tax Court granting the petitioner's motion, but limiting a rehearing and reconsideration "solely to the issue of commercial domicile of the subsidiaries of the petitioner." (J.A. 45, 47.) And it was for that reason, that the District thereafter amended its answer to add "commercial

domicile" to the other contentions of the District as set forth in its original answer. (J.A. 49.) Thus, in the present posture of the case only the question of "commercial domicile" was resolved by the Tax Court, leaving open and unresolved the remaining contentions of the District. Since the majority of the Division has concluded that the Tax Court's premise for decision of this case was erroneous, the remaining issues ought to be recommitted to the Tax Court for decision. Certainly, the District ought not to be foreclosed in this case because the Tax Court chose to decide it upon a legal basis which the majority of this Court rejects as improper.

Since a petition for rehearing is not a vehicle for a repetition of the matters set forth in the briefs of the parties, the District has not here attempted to reargue the case, nor to accomplish more than to set forth, as briefly as possible, the nature of the legal questions involved and the necessity that the Tax Court, upon remand, make findings of fact and conclusions of law, essential to a proper disposition of this case.

For the reasons stated, the District urges that the importance of the legal questions involved and the lack of findings of fact by the Tax Court relating to those questions amply justify a rehearing of this

case before the entire Court, sitting en banc.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I, Robert E. McCally, Assistant Corporation Counsel for the District of Columbia, attorney for respondent in the above-entitled case, hereby certify that the foregoing petition is presented in good faith and not for delay.

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